State of Delaware

Commodity Processing Chicken

Request for Proposal GSS-MU-07-420-VK

September 18, 2007

- Deadline to Respond -October 30, 2007 1:00 P.M. EDT

September 18, 2007

CONTRACT NO. GSS-MU-07-420-VK

ALL OFFERORS:

The enclosed packet contains a "REQUEST FOR PROPOSAL" for Commodity Processing Chicken. The proposal consists of the following documents:

REQUEST FOR PROPOSAL - CONTRACT NO. GSS-MU-07-420-VK

- 1 DEFINITIONS and GENERAL PROVISIONS
- 2 SPECIAL PROVISIONS, REQUEST FOR PROPOSAL, AND SCOPE OF WORK
- 3 PROPOSAL REPLY SECTION
 - A NO PROPOSAL REPLY FORM
 - **B-NON-COLLUSION STATEMENT AND ACCEPTANCE**
 - C PROPOSAL SUMMARY
 - D OFFICE OF MINORITY AND WOMEN BUSINESS ENTERPRISE (OMWBE) APPLICATION

In order for your proposal to be considered, the Proposal Reply Section shall be executed completely and correctly and returned in a sealed envelope clearly displaying the contract number by **October 30, 2007 at 1:00 P.M. EDT** to be considered.

Proposals shall be submitted to:

State of Delaware
Office of Management and Budget
Government Support Services
100 Enterprise Drive, Suite 4
Dover, DE 19904

Please review and follow the information and instructions contained in the General Provisions and this Request for Proposal. Should you need additional information, please call Vicki L. Karnes at (302) 857-4553.

A taste testing meeting has been scheduled for October 12, 2007 at 9:00 A.M . <u>It is mandatory that all products must be submitted to be prepared and taste tested by October 9, 2007.</u> Products should be shipped or delivered to Middle School Cafeteria, 700 Duck Creek Parkway, Smyrna, DE. 19977, Attn: Pat Conley. If an offeror does not submit their products for the taste testing review, they shall be disqualified and shall not be considered for further evaluation.

VLK

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REQUEST FOR PROPOSAL CONTRACT NO.: GSS-MU-07-420-VK Commodity Processing Chicken SPECIAL PROVISIONS

1. **COMPETITIVE SEALED PROPOSAL:**

It has been determined by the Director, Office of Management and Budget, pursuant to **Delaware Code Title 29**, **Chapter 6924 (a)** that this solicitation be offered as a request for competitive sealed proposals because the use of competitive sealed bidding is not in the best interest of the State. The use of competitive sealed proposals is necessary to:

- Conduct Oral or written discussions with offerors concerning technical and price aspects of their proposals;
- Afford offerors an opportunity to revise their proposals;
- Compare the different price, quality and contractual factors of the proposals submitted.

2. **CONTRACT REQUIREMENTS**:

This contract will be issued to cover the processing of COMMODITY "B" CHICKEN into products for consumption by schools and other authorized agencies in the State of Delaware. This Agreement sets forth the contractual obligations under which Vendor(s) utilize donated food to manufacture and deliver specified end product(s) to eligible Recipient Agency and to ensure the return of quantity, quality, and value of such donated food.

3. MANDATORY USE CONTRACT:

REF: Title 29, Chapter 6911(d) <u>Delaware Code</u>. Every state department and agency within the Executive Branch and Judicial Branch of the state government shall procure all material, equipment and nonprofessional services through the statewide contracts administered by Government Support Services, Office of Management and Budget. Delaware State University, Delaware Technical and Community College, the operations funded by Public School Districts, Delaware Transit Corporation, Department of Elections, the Legislative Branch and the Board of Pension Trustees and their consultants are specifically exempted from the requirements of this subsection.

4. **CONTRACT PERIOD**:

Each contractor's contract shall be valid for a one (1) year period from July 1, 2008 through June 30, 2009. Each contract may be renewed for two (2) additional one (1) year period through negotiation between the contractor and Office of Management and Budget, Government Support Services. Negotiation may be initiated no later than ninety (90) days prior to the termination of the current agreement.

5. <u>DELIVERY OF PROCESSED COMMODITY CHICKEN (PRODUCTS)</u>:

Processed COMMODITY CHICKEN - (product) will be delivered to the State Warehouse, Government Support Services, Delaware City, Delaware. Delivery quantities will be determined by the Food Distribution Section of the Government Support Services. Product will be shipped F.O.B. delivery point, and the processor will be responsible for the delivery of product frozen, undamaged, unspoiled and fit for human consumption. All packages being delivered must be clearly marked with product code and product description, refusal of delivery may result if this is not done.

6. **PRICES**:

Prices and/or rates shall remain firm for the term of the contract, unless further negotiations are deemed necessary by the State. Prices and/or rates will remain firm for the term of the contract. Prices shall be calculated on a "fee for service" basis using USDA donated commodities.

The pricing policy that you choose to submit must address the following concerns

- a. The structure must be clear, accountable and auditable.
- b. It must cover the full spectrum of services required.
- c. Costs and compensation must be consistent with the rates established or negotiated as a result of this RFP or P.O. issued based on this contract.

7. **PRICE ADJUSTMENT:**

If agreement is reached to extend this contract for the second, optional year, the Division of Government Support Services shall have the option of offering a determined price adjustment and shall not exceed the current Philadelphia All Urban Consumers Price Index (CPI-U), U.S. City Average. If the CPI-U is used, any increase/decrease shall reflect the change during the previous published twelve (12) month period at the time of renegotiation.

8. **SHIPPING TERMS**:

F.O.B. destination; freight prepaid.

9. **QUANTITIES**:

During the term of this Agreement the USDA may make available an estimated quantity of 648,000 lbs. of COMMODITY CHICKEN for the State of Delaware. This quantity is an estimate and may vary according to donated food availability and USDA donated food allocated for processing under this Agreement.

10. PROCESSING/PRODUCT SPECIFICATIONS:

The COMMODITY CHICKEN processed in conjunction with this Agreement shall adhere to the specifications marked as **Appendix A**. The attachment shall be considered part of this Agreement.

11. **FUNDING OUT**:

The continuation of this contract is contingent upon funding appropriated by the legislature.

12. **BID BOND REQUIREMENT**:

Bid Bond Waived.

13. **PERFORMANCE BOND REQUIREMENT**:

Performance Bond Waived.

14. MANDATORY INSURANCE REQUIREMENTS:

Certificate of Insurance and/or copies of insurance policies for the following:

- As a part of the contract requirements, the contractor shall obtain at its own cost and expense and keep in force and effect during the term of this contract, including all extensions, the minimum coverage limits specified below with a carrier satisfactory to the State. All contractors shall carry Comprehensive General Liability and at least one of the other coverages depending on the type of service or product being delivered.
 - a. Comprehensive General Liability \$1,000,000.00 per person/\$3,000,000 per occurrence.

and

- b. Medical/Professional Liability \$1,000,000.00 per person/\$3,000,000 per occurrence.
- OI
- c. Miscellaneous Errors and Omissions \$1,000,000.00 per person/\$3,000,000 per occurrence.

or

- d. Product Liability \$1,000,000.00 per person/\$3,000,000 per occurrence.
- 2. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.
- 3. Forty-five (45) days written notice of cancellation or material change of any policies shall be required.
- 4. Before any work is done hereunder, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows:

Administrator, Government Support Services Contract No. GSS-MU-07-420-VK State of Delaware 100 Enterprise Drive, Suite 4 Dover, DE. 19904

Note: The State of Delaware shall not be named as an additional insured.

15. **STATE OF DELAWARE BUSINESS LICENSE:**

Prior to receiving an award, the successful contractor shall either furnish Office of Management and Budget, Government Support Services with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200 -- Public Service, (302) 577-8205 -- Licensing Department.

Information regarding the award of this contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject your organization to applicable fines and/or interest penalties.

16. **HOLD HARMLESS**:

The contractor agrees that it shall indemnify and hold the State of Delaware and all its agencies harmless from and against any and all claims for injury, loss of life, or damage to or loss of use of property caused or alleged to be caused, by acts or omissions of the contractor, its employees, and invitees on or about the premises and which arise out of the contractor's performance, or failure to perform as specified in the Agreement.

17. **NON-PERFORMANCE**:

In the event the contractor does not fulfill its obligations under the terms and conditions of this contract, the ordering agency may purchase equivalent product on the open market. Any difference in cost between the contract prices herein and the price of open market product shall be the responsibility of the contractor. Under no circumstances shall monies be due the contractor in the event open market products can be obtained below contract cost. Any monies charged to the contractor may be deducted from an open invoice.

18. **FORCE MAJEURE**:

Neither the contractor nor the ordering agency shall be held liable for non-performance under the terms and conditions of this contract due, but not limited to, government restriction, strike, flood, fire, or unforeseen catastrophe beyond either party's control. Each party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract.

19. **EXCEPTIONS**:

Offerors may elect to take minor exception to the terms and conditions of this RFP. Office of Management and Budget, Government Support Services will evaluate each exception according to the intent of the terms and conditions contained herein, but Office of Management and Budget, Government Support Services shall reject exceptions that do not conform to State bid law and/or create inequality in the treatment of offerors. Exceptions shall be considered only if they are submitted with the proposal or before the date and time of the proposal opening.

20. MANDATORY USAGE REPORT:

One of the primary goals in administering this contract is to keep accurate records regarding its actual value. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested bidders.

A report shall be furnished by the successful contractor MONTHLY Electronically in Excel format detailing the purchasing of all items on this contract. The format to be followed is described herein and shall be filed within fifteen (15) days after the end of each reporting period. Any exception to this mandatory requirement may result in cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, contractors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals. Vendors not having activity during a specific month, shall reply with a "no activity" if there is no activity during the reporting period.

The report shall be submitted electronically in <u>EXCEL</u> and sent as an attachment to insert email. It shall contain the six-digit department and organization code.

Format of Report

State of Delaware Monthly Usage Report

STATE OF DELAWARE								
		MONT	HLY USAGE R	REPORT				
Contract Name:		Contract Number:				Report Start Date:		
Supplier Name:						Report End Date:		
Contact Phone:						Today's Date:		
Agency Name or School District	Division or Name of School	Budget Code	Item Description	Contract Item Number	Quantity	Cost Each	Total Cost	

Note: A copy of the Usage Report will be sent by electronic mail to the Awarded Vendor.

The report shall be submitted electronically in **EXCEL** and sent as an attachment to <u>Vicki.karnes@state.de.us</u>. It shall contain the six-digit department and organization code for each agency and school district.

21. <u>BUSINESS REFERENCES: (INCUMBENT EXCLUDED)</u>

Offeror must supply three (3) business references consisting of current or previous customers of similar scope and value with your reply. Include name, address, telephone number, fax number, e-mail address, and a verified current contact person.

22. **ORDERING PROCEDURE**:

Successful contractors are required to have either a local telephone number within the (302) area code, a toll free (800) number, or agree to accept collect calls. Each agency is responsible for placing their orders and may be accomplished by written purchase order, telephone, fax or computer on-line systems. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditiond. Vendor agrees to produce and deliver end product upon the order of the Food Distribution Section, to the State Warehouse, Government Support Services, Delaware City, Delaware. All deliveries must be clearly marked with the item number and also a description.

23. **NUTRIENT INFORMATION**:

Nutrient information for each product should accompany bid.

24. **BACTERIAL ANALYSIS**:

Bacterial analysis will be performed by an independent food technology firm on a regular basis. If an analysis shows substandard product, the costs associated with the analysis will be borne by the Vendor and affected processed product will be removed and replaced.

25. **BILLING**:

The contractor is required to <u>"Bill as Shipped"</u> to the respective ordering agency(s). Ordering agencies shall provide contract number, ship to and bill to address, contact name and phone number.

26. **PAYMENT**:

The agencies or school districts involved will authorize and process for payment each invoice within thirty (30) days after the date of receipt of a correct invoice. The contractor or vendor must accept full payment by procurement (credit) card and/or conventional check and/or other electronic means at the State's option, without imposing any additional fees, costs or conditions.

27. **PRODUCT SUBSTITUTION**:

All items or services delivered during the life of the contract shall be of the same type and manufacture as specified or accepted as part of the proposal unless specific approval is given by Office of Management and Budget, Government Support Services to do otherwise. Awarded vendors are highly encouraged to offer any like substitute product (s), either generic or brand name, at any time during the subsequent contract term, especially if an opportunity for cost savings to the state exists. In all cases, the state may require the submission of written specifications and/or product samples for evaluation prior to any approvals being granted.

28. **DOCUMENT(S) EXECUTION**:

Both the non-collusion statement that is enclosed with this Request for Proposal and the contract form delivered to the successful contractor for signature <u>shall</u> be executed by a representative who has the legal capacity to enter the organization into a formal contract with the State of Delaware, Office of Management and Budget, Government Support Services. The Awarded vendor(s) shall submit their **W-9** with the executed contract form.

29. FORMAL CONTRACT AND/OR PURCHASE ORDER:

No employee of the Contractor(s) is to begin any work prior to receipt of a State of Delaware Purchase Order signed by authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office. A purchase order, telephone call, fax or State credit card shall serve as the authorization to proceed with work in accordance with the bid specifications and the special instructions, once it is received by the Contractor(s).

30. SCHEDULE FOR PERFORMANCE OF WORK:

All work described in these specifications shall be completed with reasonable promptness. As used in this Section, the State of Delaware shall be the sole judge of the term "reasonable". If the Contractor does not begin the work in a reasonable amount of time, they will be notified that if they fail to initiate the work promptly, the contract may be terminated and the State will forthwith proceed to collect for nonperformance of work.

31. CONTRACTOR RESPONSIBILITY:

The State will enter into a contract with the successful contractor. The successful contractor shall be responsible for all products and services as required by this RFP. Subcontractors, if any, shall be clearly identified in the financial proposal.

This contract may be declared immediately terminated at the option of the Contract Administrator, Government Support Services, State of Delaware if this contract and/or any of its terms, conditions, or convenants are not complied with by Vendor, or if any right thereunder in favor of Food Distribution Section is threatened or jeorpardized by Vendor or his agent. This contract may be terminated by the agency upon delivering thrity days written notice to the other and all unencumbered or unobligated food or funds shall be returned to the Food Distribution Section. In the event of termination due to noncompliance with the terms of this contract, or at the request of the Vendor, transportation costs for the return of donated food shall be borne by Vendor.

Vendor shall not assign and/or delegate any of the duties and/or responsibilities to process food products under this Agreement to any party, either by way of the sub-contract or any other arrangement, without prior written consent of the State of Delaware, Government Support Services.

Vendor agrees to produce and deliver end product upon the order of the Food Distribution Section to the State Warehouse, Government Support Services, Delaware City, Delaware.

Nutrient information for each product should accompany bid.

32. **PERSONNEL**:

- a. The Contractor represents that he has, or will secure at his own expense, all personnel required to perform the services required under this contract.
- b. All of the services required hereunder shall be performed by the Contractor or under his direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
- c. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the State.

33. **SUB CONTRACTING**:

Vendor shall not assign and/or delegate any of the duties and/or responsibilities to process food products under this Agreement to any party, either by way of a sub-contract or any other arrangement, without the prior written consent of the State of Delaware, Government Support Services.

34. **METHOD OF PAYMENT**:

- a. For each P.O. issued as part of this contract, the State will pay contractor monthly, within thirty (30) days of receipt of the Contractor's billing, the amount which is legitimately earned by the Contractor, and supported by payroll data and an itemized accounting of reasonable reimbursable direct non-salary costs. A current progress report of the work shall accompany each billing.
 - Final settlement for total payment to the Contractor will be made within thirty (30) days from the date of final written State acceptance of the work and services as agreed to in the P.O.
- b. No premium time for overtime will be paid without prior written State authorization. Indirect overhead cost shall not be applied to the premium portion of the overtime.

35. **TERMINATION OF P.O.'s**:

a. <u>Termination for Cause</u> If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the Agency shall have the right to terminate the P.O. by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the contractor in the performance of the P.O. shall, at the option of the Agency, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the Agency.

36. **TERMINATION OF P.O.'s**: (continued)

b. <u>Termination for Convenience</u> The Agency may terminate the P.O. at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the department, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials which are usable to the Agency.

37. **ELIGIBLE WORK ACTIVITIES**:

The following are activities that shall be reimbursable under this contract to the extent that they meet the requirements of this contract:

- a. Travel for purposes of depositions, settlement negotiations, and trial attendance, and, upon request, additional data collection, consultation with private, state, and federal personnel, collection, consultation with private, state, and federal personnel, inspection of facilities, and other purposes consistent with this contract. Eligible costs include reasonable charges for transportation by common carrier, mileage, tolls, lodging, meals, and other costs provided for by state law subject to the following conditions:
- i. No travel outside the Continental United States shall be permitted without prior written approval of the department; and
- ii. Receipts shall be provided for all travel-related costs for travel outside of Delaware as required by the State Division of Accounting.
- b. Procurement of reports or other printed materials and reproduction of materials; and
- c. Staff time involved in research, review, and in preparation of reports and comment letters, including the employment of temporary and/or part-time assistance, other than subcontracts for said purpose.

38. **CHANGES**:

Both parties may, from time to time, require changes in the services to be provided by the Contractor under the Scope of Work. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the Agency and the Contractor shall be incorporated in written amendments to the Purchase Order.

39. **INTEREST OF CONTRACTOR**:

The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree in providing products or performing services required under this contract. The Contractor further covenants that in the performance of this contract, no person having any such interest shall be employed.

40. PUBLICATION, REPRODUCTION AND USE OF MATERIAL:

No material produced in whole or part under this contract shall be subject to copyright in the United States or in any other country. The State shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data, or other materials prepared under this contract; provided, however, that the State agrees not to use any design or engineering plans prepared by the Contractor for anything other than their intended purpose under this Contract. The Contractor shall have the right to publish any and all scientific findings. Appropriate acknowledgment and credit for the State's support shall be given in the publication.

41. RIGHTS AND OBLIGATIONS:

The rights and obligations of each party to this agreement shall not be effective, and no party shall be bound by the terms of this agreement, unless and until a valid executed purchase order has been approved by the Secretary of Finance, and all procedures of the Department of Finance have been complied with. A separate purchase order shall be issued for every project.

42. **ASSIGNMENT OF ANTITRUST CLAIMS**:

As consideration for the award and execution of this contract by the State, the Contractor hereby grants, conveys, sells, assigns, and transfers to the State of Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

43. **COVENANT AGAINST CONTINGENT FEES**:

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

44. **GRATUITIES**:

- a. If it is found, after notice and hearing, by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor or any agent of the State with a view toward securing a contract, or securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performance of this contract, the State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract and/or may pursue such other rights and remedies provided by law or under this agreement; provided that the existence of the facts upon which the State makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this contract; and
 - b. In the event this contract is terminated pursuant to subparagraph "a", the State shall be entitled (i) to pursue the same remedies against the Contractor, and (ii) to exemplary damages, as a penalty in addition to any other damages to which it may be entitled by law, in an amount which shall be not less than three, nor more than ten, times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee. The amount of such exemplary damages shall be in the sole discretion of the State.

45. **AFFIRMATION**:

The Contractor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

46. **AUDIT ACCESS TO RECORDS**:

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Contractor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years from the date services were rendered by the Contractor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Contractor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of his/her duties under the Contract. Upon notice given to the Contractor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Contractor's financial records will be borne by the Contractor. Reimbursement to the State for disallowances shall be drawn from the contractor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

47. **TERMINATION OF CONTRACT**:

- a. <u>Termination for Cause</u> If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.
- b. <u>Termination for Convenience</u> The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.

48. **REMEDIES**:

Except as otherwise provided in this contract, all claims, counterclaims, disputes, and other matters in question between the State and the Contractor arising out of, or relating to, this contract, or a breach of it may be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State of Delaware.

49. **AMENDMENTS**:

This contract may be amended, in writing, by mutual agreement of the parties.

50. **AGENCY'S RESPONSIBLIITIES**:

The Agency shall:

- a. Examine and review in detail all letters, reports, drawings and other documents presented by the Contractor to the Agency and render to the Contractor in writing, findings and decisions pertaining thereto within a reasonable time so as not to delay the services of Contractor.
- b. Give prompt written notice to the Contractor whenever the Agency observes or otherwise becomes aware of any development that affects the scope or timing of the Contractor's services.

51. **CONFIDENTIALITY**:

Specific attention should be given to the identification of those portions of your proposal which you deem to be confidential or proprietary information which should not be disclosed under the Delaware Public Information Act. Offerors are advised that upon request for this information from a third party, the Procurement Officer is required to make an independent determination as to whether the information may be or must be divulged to the party.

52. **CONTRACT DOCUMENTS**:

The Definitions and General Provisions and any Special Instructions, Specifications, Request for Proposal, Proposal, Purchase Order, and Contract shall be a part of and constitute the entire Agreement entered into by the State of Delaware and any offeror. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter:

- Contract
- Request for Proposal
- Specifications or Scope of Work
- Definitions & General Provisions
- Proposal
- Purchase Order
- Special Instructions

53. **ASSIGNMENT**:

This contract shall not be assigned except by express written consent from the Director, Office of Management and Budget, Government Support Services, of the State of Delaware.

54. VENDOR EMERGENCY RESPONSE POINT OF CONTACT:

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan April 2005. Failure to provide this information could render the bid as non-responsive.

55. **ELECTRONIC CATALOG**:

The successful vendor(s) may be required to submit their items list in electronic format designated by the State.

Note: The State of Delaware is in the process of implementing a new financials system, which will require the use of:

- Electronic catalogs
- Commodity/classification code: United Nations Standard Products and Services Code (UNSPSC).
- A unique item ID for all items in our system

The state has made the determination to include the requirement in this contract for two reasons:

- 1. To find out what vendors can offer.
- 2. To give the agencies and school districts a level of comfort in using electronic catalogs.

I. <u>INTRODUCTION</u>:

A. PURPOSE:

This contract will be issued to cover the processing of Commodity "B" Chicken into products for consumption by schools and other authorized agencies in the State of Delaware. This Agreement sets forth the contractual obligations under which Vendor utilize donated food to manufacture and deliver specified end product(s) to eligible Receipt Agency to ensure the return of quantity, quality, and value of such donated food.

B. **GUIDELINES**:

Offerors proposal must respond to each and every requirement outlined in the RFP in order to be considered responsive. Proposals must be clear and concise.

Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers.

Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

II. FORMAT FOR PROPOSAL:

A. **INTRODUCTION**:

This section prescribes the mandatory format for the presentation of a proposal in response to this RFP. Each offeror must provide every component listed in the order shown in this RFP, using the format prescribed for each component. A proposal may be rejected if it is incomplete or conditional.

B. COVER LETTER:

Each proposal will have a cover letter on the letterhead of the company or organization submitting the proposal. The cover letter must briefly summarize the offeror's ability to provide the services specified in the RFP.

The cover letter shall be signed by a representative who has the legal capacity to enter the organization into a formal contract with the State of Delaware, Office of Management and Budget, Government Support Services.

C. TABLE OF CONTENTS:

Each proposal must include a Table of Contents with page numbers for each of the required components of the proposal.

D. DESCRIPTION OF SERVICES AND QUALIFICATIONS:

Each proposal must contain a detailed description of how the offeror will provide each of the services outlined in this RFP. This part of the proposal may also include descriptions of any enhancements or additional services or qualifications the offeror will provide that are not mentioned in this RFP.

E. NUMBER OF COPIES WITH MAILING OF PROPOSAL:

Three (3) copies of the Proposal shall be submitted in a sealed package clearly marked with the name of the offeror and labeled "GSS-MU-07-420-VK". One of the copies shall be marked "Master Copy" and will contain original signatures in all locations requiring an offeror signature. The remaining two (2) copies do not require original signatures. (Three (3) hard copies of your response with two (2) Diskettes with the completed Excel and Word files must be received).

F. ADDENDA TO THE RFP:

If it becomes necessary to revise any part of this RFP, revisions in writing will be provided to all contractors known to have received a copy of the RFP. Potential offerors shall acknowledge in writing receipt of all amendments, addenda and changes issued in connection with this RFP by submitting an affirmative statement in the Proposal.

G. <u>INCURRED EXPENSES</u>:

The State will not be responsible for any expenses incurred by the bidder in preparing and submitting a proposal.

H. ECONOMY OF PREPARATION:

Proposals should be prepared simply and economically, providing a straight-forward, concise description of the contractors offer to meet the requirements of the RFP. DO NOT USE RING BINDERS.

I. RIGHT TO REJECT PROPOSALS/WAIVE OR CORRECT MINOR IRREGULARITIES:

The State reserves the right to withdraw this Request for Proposal, to reject any proposals, to waive minor irregularities in proposals or to allow the offeror to correct a minor irregularity if the best interest of the State will be served by doing so.

III. SCOPE OF WORK:

A. OVERVIEW:

The Contractor(s) shall provide all materials and labor to satisfy the State of Delaware's need for the processing of Commodity "B" Chicken into products for consumption by schools and other authorized agencies in the State of Delaware as described herein.

B. <u>DETAILED REQUIREMENTS</u>:

The requirements of this RFP are shown in Appendix A, attached, and made a part of the contract.

IV. PROPOSAL EVALUATION PROCEDURES:

A. BASIS OF AWARD:

Office of Management and Budget, Government Support Services shall award this contract to the most responsible and responsive offeror who best meets the terms and conditions of the proposal. The award will be made on basis of price, product evaluation, and prior history of service and capability.

Office of Management and Budget, Government Support Services reserves the right to reject any or all proposals in whole or in part, to make multiple awards, partial awards, award by types, item by item, or lump sum total, whichever may be most advantageous to the State of Delaware. The intent though is to award this contract to one (1) offeror.

Offerors submitting proposals may be afforded an opportunity for discussion and revision of proposals. Revisions may be permitted after submissions of proposals and prior to award for the purpose of obtaining best and final offers. Negotiations may be conducted with responsible offerors who submit proposals found to be reasonably likely to be selected for award. The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process.

B. **REVIEW COMMITTEE**:

A group with expertise in procurement, contract management, School Nutrition will comprise the Review Committee.

C. REQUIREMENTS OF THE OFFEROR:

The purpose of this section is to assist the Review Committee to determine the ability of the organization to provide the services described in the application. The response should contain at a minimum the following information:

- * Brief history of the organizations, including accreditation status, if applicable.
- * Applicant's experience, if any, providing similar services. At least three references are required (See § 18 Special Provisions).
- * Brief history of the subcontractor of the organization, if applicable. At least three references of subcontractor, if applicable.

C. <u>CRITERIA AND SCORING</u>:

		POINTS
1.	TASTE	100
2.	APPEARANCE	50
3.	PRICING	50
4.	NUTRITIONAL VALUE	25
5.	SERVICE	25
6.	PREPARATION EASE	25
	TOTAL SCORE	275

Review Committee members will assign up to the maximum number of points listed for each of the listed above. For items having quanitative answers, points will be proportionate to each proposal's response. Items with qualitative answers will receive the average of points assigned by Review Committee members.

V. TASTE TESTING MEETING:

A taste testing meeting has been scheduled for October 12, 2007 at 9:00 A.M. <u>It is mandatory that all products must be submitted to be prepared and taste tested by October 9, 2007.</u> Products should be shipped or delivered to Middle School Cafeteria, 700 Duck Creek Parkway, Smyrna, DE. 19977, Attn: Pat Conley. If an offeror does not submit their products for the taste testing review, they shall be disqualified and shall not be considered for further evaluation.

APPENDIX A SPECIFICATIONS: CHICKEN PRODUCTS

Chickens shipped to processor will be requisitioned by the Government Support Services as "Commodity B."

<u>Commodity B</u> (Bulk Pack) Fresh frozen or chilled (at the option of Contractor) ready-to-cook chickens packed in containers commercially acceptable for shipment according to meat and poultry inspection requirements. (US Grade A, except breasts, may be US Grade B for trimming.)

When fresh chilled chickens are delivered at the option of the Contractor, shipment to the destination specified in shipping instruction can be made in drain tanks containing flaked ice, or in combo bins as loose chilled pack, or the chickens may be packaged in plastic-film bags, then packed in fiberboard shipping containers. If frozen, product must be in commercially acceptable bulk or other type fiberboard containers. All bags and shipping containers shall be acceptable by common or other carrier for safe transportation to point of destination specified in shipping instructions. More than one chicken may be packaged in these bags, and the bags need not be shrunk or vacuumized.

INSPECTION AND CHECKLOADING

All commodity chickens shall be examined by a USDA grader prior to acceptance by the consignee for product temperatures upon arrival, condition, identity, weight and count. Weight tests will be performed on product in the form in which it is received.

The inspection and checkloading required shall be performed by the grader. Procedures to be followed and a schedule of fees for these services may be obtained by contacting the nearest Grading Branch, Field Office or the National Supervisor, Poultry Grading Branch, Washington, D.C. 20250, telephone (202) 447-3271. The quality, weight, packaging, and checkloading of the commodity shall be evidenced by certificates issued by the grader.

Vendor shall not ship the commodity unless he is informed by the grader that a designated lot is acceptable.

PROCESSING

Processing inspection shall be under the supervision of a representative of the Poultry Grading Branch. Grading other processing phases and inspection sampling, test weighing, packaging and packing, labeling and marking, and check-loading, as required, shall be under the continuous supervision of the USDA Poultry Grading Branch.

Temperatures of product, unless otherwise specified, shall be in compliance with 9 CFR Part 381 throughout all operations including processing, chilling, transportation, and freezing.

At the time frozen product is offered for shipment or delivery, product showing any evidence of defrosting, refreezing, frozen deterioration or excessive seepage shall cause rejection of the product.

APPENDIX A SPECIFICATIONS: CHICKEN PRODUCTS (cont.)

I. Products processed from A-521 Small Chicken

<u>Fully Cooked Roasted 8- Piece Chicken-</u> Oven roasted chicken cut into 8 pieces (wing, thigh, breast, and drum) derived from USDA commodity code A-521 2.5-3.75 pound WOGS. Cut up chicken is marinated up to 12% with a mild mesquite flavoring and fully cooked by oven roasting to impart a natural roasted appearance. No full steam cooking is permitted. Finished product is to be packed in separate color coded bags by chicken part for ease in serving.

<u>Fully Cooked Breaded 8-Piece Chicken</u>- Breaded fully cooked chicken cut into 8-pieces (wing, breast, thigh, and drum) derived from USDA commodity code A-521 2.5-3.75 pound WOGS. Cut up chicken is marinated up to 12% and uniformly breaded with up to 25% batter and breading. Product is to be breaded with a seasoned "country style" breading produced from enriched wheat flour and cooked to obtain a golden brown breading color. No full steam cooking is permitted. Finished product is to be packed in separate color coded bags by chicken part for ease in serving.

II. Products processed from A-522 large chickens

<u>Fully Cooked Breaded Chicken Patty-</u> Breaded fully cooked CN labeled chicken patty with isolated soy protein derived from processing USDA code A-522 large WOGS. No other types of soy protein permitted. Finished product to weight between 3.35 ounces and 3.55 ounces and provide 2 ounces meat/meat alternative and one bread serving. Patty to be batter breaded with enriched wheat flour and modified crumb style breader for optimum oven performance and extended holding time. Processor to utilize USDA approved standard yield processing format with a minimum finished product processing yield of 120% required. Minimum portion count per case to be stated on label.

<u>Fully Cooked Breaded Chicken Nuggets</u>- Breaded fully cooked CN labeled chicken nuggets with isolated soy protein derived from processing USDA code A-522 large WOGS. No other types of soy protein permitted. Individual finished product weight between .65 ounces and .75 ounces with a serving weight of 3.25 ounces to 3.75 ounces and provide 2 ounces of meat/meat alternative and one bread serving. Nuggets to be breaded with enriched wheat flour and modified crumb style breader for optimum oven performance and extended holding time. Processor to utilize USDA approved standard yield processing format with a minimum finished processing yield of 120% required. Minimum portion count per case to be stated on label.

<u>Fully Cooked Breaded 3-D/Natural Shape Chicken Tender-Breaded formed fully cooked 3-D/natural shape CN labeled chicken tender with isolated soy protein derived from processing USDA code A-522 large WOGS. No other types of soy protein permitted. Individual finished product weight between 1.20 ounces and 1.35 ounces with a serving weight of 3.6 ounces to 4.05 ounces. Product is to be processed with production equipment that will create a finished product with a 3-D/natural shape and appearance. Strips are to be breaded with enriched wheat flour and modified crumb style breader for optimum oven performance and extended holding time.</u>

Processor to utilize USDA approved standard yield processing format with a minimum finished processing yield of 120% required. Minimum portion count to be stated on label.

<u>Fully Cooked Hot and Spicy Breaded3-D/Natural Shape Chicken Tender</u>- Breaded Hot and Spicy formed fully cooked CN labeled chicken tender with isolated soy protein derived from processing USDA code A-522 large WOGS. No other types of soy protein permitted. Individual finished weight between 1.20 ounces and 1.35 ounces with a serving weight between 3.6 ounces and 4.05 ounces. Product is to be processed with production equipment that will create a finished product with a 3-D/natural shape and appearance. Strips are to be breaded with enriched wheat flour and modified crumb style breader for optimum oven performance and extended holding time. Processor to utilize USDA standard yield processing format with a minimum processing yield of 120% required. Minimum portion count to be stated on label.

<u>Fully Cooked Popcorn Chicken with Cups-</u> Breaded formed fully cooked CN labeled popcorn bites with isolated soy protein derived from processing USDA code A-522 large WOGS. No other types of soy protein permitted. Individual finished piece weight between .20 ounces and .40 ounces with a serving weight of 3.0 ounces to 3.60 ounces. Product is to be packed with correct portion size printed cups in equal proportion to the number of servings per case. Popcorn bites are to be breaded with enriched wheat flour and modified crumb style breader for optimum over performance and extended holding time. Processor to utilize USDA approved standard yield processing format with a minimum processing yield of 120% required. Minimum portion count to be stated on label.

<u>Un-breaded Fully Cooked Grill Marked Chicken Patty</u>- Un-breaded formed fully cooked CN labeled chicken patty with grill marks and isolated soy protein derived from processing USDA code A-522 large WOGS. No other types of soy protein allowed. Individual serving weight between 2.5 ounces and 3.0 ounces. Product to be produced with a natural breast shape finished appearance and impingement grill marks. Processor to utilize USDA standard yield processing format with a minimum processing yield of 75% required. Minimum number of portions to be stated on label.

<u>Fully Cooked Fajita Seasoned Strips</u>- Oven roasted CN labeled fully cooked fajita flavored marinated whole muscle strips derived from processing USDA commodity A-522 large WOGS. De-boned chicken is marinated with up to 12% with a fajita seasoning and fully cooked by oven roasting to impart a natural roasted appearance and grill-marked with an impingement sear for additional roasted flavor. No full steam cooking is permitted. Processor to utilize USDA standard yield processing format with a minimum finished processing yield of 75% required. Minimum number of portions to be stated on label.

PROPOSAL REPLY SECTION

CONTRACT NO. GSS-MU-07-420-VK

Commodity Processing Chicken

Please fill out the attached forms fully and completely and return with your proposal in a sealed envelope clearly displaying the contract number to Office of Management and Budget, Government Support Services by **October 30, 2007, 1:00 P.M. EDT** at which time bids will be opened.

A taste testing meeting has been scheduled for **October 12**, **2007** at **9:00 A.M** . <u>It is mandatory that all products must be submitted to be prepared and taste tested by October 9, 2007.</u> Products should be shipped or delivered to Middle School Cafeteria, 700 Duck Creek Parkway, Smyrna, DE. 19977, Attn: Pat Conley. If an offeror does not submit their products for the taste testing review, they shall be disqualified and shall not be considered for further evaluation.

Proposals shall be submitted to:

State of Delaware
Office of Management and Budget
Government Support Services
100 Enterprise Drive, Suite 4
Dover, DE. 19904

PUBLIC PROPOSAL OPENINGS

The public proposal opening insures the citizens of Delaware that contracts are being proposed fairly on a competitive basis and comply with Delaware procurement laws. The agency conducting the opening is required by law to publicly open the proposals at the time and place specified and the contract shall be awarded within ninety (90) days thereafter. The main purpose of the proposal opening is to reveal the name(s) of the offeror(s), not to serve as a forum for determining the apparent low offerors. The disclosure of additional information, including prices, shall be at the discretion of the contracting agency until such time that the responsiveness of each proposal has been determined.

After receipt of a fully executed contract(s), the Delaware public and all offerors are invited to make an appointment with the contracting officer in order to review pricing and other non-confidential information.

NOTE: ONLY THE OFFEROR'S NAME AND ADDRESS WILL BE READ AT THE OPENING

STATE OF DELAWARE

OFFICE OF MANAGEMENT AND BUDGET GOVERNMENT SUPPORT SERVICES 100 ENTERPRISE DRIVE, SUITE 4 DOVER, DE. 19904

NO PROPOSAL REPLY FORM

CONTRACT # GSS-MU-07-420-VK CONTRACT TITLE: Commodity Processing Chicken

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Offeror's List by so indicating below, or do not return this form or bona fide proposal.

Unfortuna	ately, we	must offer a "No Proposal" at this time because:
	1.	We do not wish to participate in the proposal process.
	2.	We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:
	3.	We do not feel we can be competitive.
	4.	We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
	5.	We do not wish to sell to the State. Our objections are:
	6.	We do not sell the items/services on which Proposals are requested.
	7.	Other:
		FIRM NAME SIGNATURE
	We w	ish to remain on the Offeror's List for these goods or services.
	We w	ish to be deleted from the Offeror's List for these goods or services.

CONTRACT NO.: GSS-MU-07-420-VK

TITLE: COMMODITY PROCESSING CHICKEN

OPENING DATE: October 30, 2007, 1:00 P.M.

NON-COLLUSION STATEMENT

This is to certify that the undersigned offeror has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this bid submitted this date to Office of Management and Budget, Government Support Services.

It is agreed by the undersigned bidder that the signed delivery of this bid represents the bidder's acceptance of the terms and conditions of this Invitation to Bid including all specifications and special provisions.

NOTE: Signature of the authorized representative MUST be of an individual who legally may enter his/her organization into a formal

contract with the State of Delaware, Office of Management and Budget, Government Support Services. COMPANY NAME _____ Check one) Corporation Partnership Individual NAME OF AUTHORIZED REPRESENTATIVE (Please type or print) SIGNATURE COMPANY ADDRESS _____ FAX NUMBER PHONE NUMBER **EMAIL ADDRESS** STATE OF DELAWARE FEDERAL E.I. NUMBER LICENSE NUMBER (circle one) (circle one) (circle one) COMPANY Nο Women Yes Nο Minority Yes Disadvantaged Yes Nο CLASSIFICATIONS: **Business Business** Business CERT. Ent<u>erprise</u> Enterprise Enterprise (MBE) (DBE) NO. (WBE) [The above table is for information and statistical use only.] PURCHASE ORDERS SHOULD BE SENT TO: (COMPANY NAME) **ADDRESS** CONTACT PHONE NUMBER **AFFIRMATION:** Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment? YES _____ NO ____ if yes, please explain _____ THIS PAGE SHALL BE SIGNED, NOTARIZED AND RETURNED WITH YOUR PROPOSAL TO BE CONSIDERED SWORN TO AND SUBSCRIBED BEFORE ME this ______ day of ______, 20 ______, My commission expires _____

State of

County of

City of

CONTRACT NO. GSS-MU-07-420-VK COMMODITY PROCESSING OF CHICKEN PROPOSAL QUOTATION REPLY SECTION

NAME	AND ADDRESS OF VENDOR:
AUTHO	ORIZED SIGNATURE
PRINT	ED NAME AND TITLE
FEDEF	RAL E.I. No
The fol	llowing documents MUST be included with the Bid:
1. 2. 3. 4. 5.	Signed and notarized Non-Collusion Statement. Statement and description of bidder's program of quality control. Completed End Product Data Schedule(s). Master Donated Food Processing Agreement. Disbarment Certificate
1.	List three references consisting of State, Municipal or local agencies who have entered into processing agreements with the bidder. Provide name, address, telephone number, and contract person:
A	
В	
C	
2.	Indicate the availability of back-haul for Commodity Chicken from State Warehouse, Government Support Services, Delaware City, DE to your plant. Specify the minimum amount necessary for back-haul. Propose a price (per lb.) for back-haul:
	Is back-haul available? Yes No
	Minimum acceptable load: <u>lbs.</u>
	Price per lb. for back-haul: <u>per lb.</u>
3.	List the name, address, telephone number, and contact person for any sub-contractors who may be used in conjunction with this Agreement:

CONTRACT NO. GSS-MU-07-420-VK COMMODITY PROCESSING OF CHICKEN BID QUOTATION REPLY SECTION

NAME	E AND ADDRESS OF	VENDOR:			
		nipment consisting of	for Contract No. GSS-M 36,000 lbs. Commodity consider: YIELD		
Proce <u>Part</u>		Raw <u>Meat</u>	Processed Product	Processing <u>Fee</u>	
	Deboned Chicken Breast Meat	lbs.	Chicken Nuggets Total lbs.	\$ Per	lh
proces	ssed				10.
		Total Breadi	ng %	product	
	Deboned Chicken Breast Meat	lbs.	Chicken Patties Total lbs.	\$ Per	lh
proces	ssed				ID.
		Tota	l Breading %	product	
			Other lbs.		
		lbs.	lbs. (Specify end-product)	
Other		lbs.		\$ Per	lh
proces	ssed			product	ID.
1.	method of disposal.	Indicate the dollar a	aste specified in your p amount to be credited to t (lb., case, etc.) of unus	the State of Delawa	re,
<u>DOLL/</u>	AR AMOUNT TO BE CR	EDITED TO THE STATE	OF DELAWARE:\$	PER CONTAINER	<u>२</u>
2.	donated chicken. S		ers received from the U amount (per container) rt Services: \$	which will be credited	

CONTRACT NO. GSS-MU-07-420-VK COMMODITY PROCESSING CHICKEN

POULTRY PROCESSING

The Vendors should attach complete yield information to the End Product Data Schedule if finished products from chill pack (Commodity B) poultry.

CONTRACT NO. GSS-MU-07-420-VK COMMODITY PROCESSING OF CHICKEN PROPOSAL QUOTATION REPLY SECTION

E AND ADDRESS OF VENDOR:			
e yield on the conversion of a full truck last total lbs. of finished product assuming	oad of 36,000 lbs. of Commodity Chicken "B". Report g full conversion into the item listed.		
Shipping Point for processed product:			
Indicate the value of cases and containers received from the USDA in conjunction with donated Chicken. Show value as a dollar amount (per container) which will be credited to the State of Delaware, Government Support Services:			
\$ per container			
Provide the following information:			
The quantity of Chicken ("rework") which remains unincorporated in a finished product at the end of a production run. The quantity shall be expressed as a "percent" of total batch weight (in lbs.) at the beginning of the run.			
A formula for each end-product which describes the quantity of "rework" (previously processed Chicken) which can be added to subsequent production runs of previously unprocessed Chicken. The quantity of "rework" which can be added to subsequent production runs shall be expressed as a "percent" of the total weight of previously unprocessed Chicken used in a production run.			
A value for unused "rework" expressed in dollars per lb.			
	\$PER LB. "REWORK"		
A proposal for other products which can utilize "rework" not incorporated into othe end-products. Describe the proposed products below, and include an end-product data schedule for each item:			
/ERY	CONTRACT TOTAL VALUE \$		
Stock days ARO	<u>COMPANY</u>		
Non-Stock days ARO			
	DATE		
	Shipping Point for processed product: Indicate the value of cases and cordonated Chicken. Show value as a context the State of Delaware, Government S per container Provide the following information: The quantity of Chicken ("rework") with end of a production run. The quaweight (in lbs.) at the beginning of the A formula for each end-product with production runs shall be expressed unprocessed Chicken used in a product of A value for unused "rework" expressed at a schedule for each item: A proposal for other products which end-products. Describe the proposal for each item: MERY Stock days ARO		

Office of Management and Budget Government Support Services

DEFINITIONS AND GENERAL PROVISIONS

The attached Definitions and General Provisions apply to all contracts and are part of each invitation to bid. The requirement to furnish a bid bond and performance bond is applicable unless waived in the Special Provisions. Should the General Provisions conflict with the Special Provisions, the Special Provisions shall prevail. Bidders or their authorized representatives are required to fully acquaint themselves as to State procurement laws and regulations prior to submitting bid.

DEFINITIONS

Whenever the following terms are used, their intent and meaning shall be interpreted as follows:

STATE: The State of Delaware

AGENCY: State Agency as noted on cover sheet.

DESIGNATED OFFICIAL: The agent authorized to act for the Agency.

<u>BID INVITATION</u>: The "bid invitation" or "invitation to bid" is a packet of material sent to vendors and consists of General Provisions, Special Provisions, specifications, and enclosures.

GENERAL PROVISIONS: General Provisions are instructions pertaining to contracts in general. They contain, in summary, requirements of laws of the State, policies of the Agency, and instructions to vendors.

<u>SPECIAL PROVISIONS</u>: Special Provisions are specific conditions or requirements peculiar to the contract under consideration and are supplemental to the General Provisions. Should the Special Provisions conflict with the General Provisions, the Special Provisions shall prevail.

<u>BIDDER OR VENDOR</u>: Any individual, firm, or corporation formally submitting a proposal for the material or work contemplated, acting directly or through a duly authorized representative.

PROPOSAL: The offer of the bidder submitted on the approved form and setting forth the bidder's prices for performing the work or supplying the material or equipment described in the specifications.

SURETY: The corporate body which is bound with and for the contract, or which is liable, and which engages to be responsible for the contractor's payments of all debts pertaining to and for his acceptable performance of the work for which he has contracted.

<u>BIDDER'S DEPOSIT</u>: The security designated in the proposal to be furnished by the bidder as a guaranty of good faith to enter into a contract with the Agency if the work to be performed or the material or equipment to be furnished is awarded to him.

CONTRACT: The written agreement covering the furnishing and delivery of material or work to be performed.

CONTRACTOR: Any individual, firm, or corporation with whom a contract is made by the Agency.

<u>CONTRACT BOND</u>: The approved form of security furnished by the contractors and his surety as a guaranty of good faith on the part of the contractor to execute the work in accordance with the terms of the contract.

SECTION A - GENERAL PROVISIONS

1. **BID INVITATION**:

See "Definitions".

2. PROPOSAL FORMS:

The invitation to bid shall contain pre-printed forms for use by the vendor in submitting his bid. The forms shall contain basic information such as description of the item and the estimated quantities and shall have blank spaces for use by the vendor for entering information such as unit bid price, total bid price, etc.

3. **INTERPRETATION OF ESTIMATES**:

- a. The attention of bidders is called to the fact that, unless stated otherwise, the quantities given in the proposal form are to be considered to be approximate only and are given as a basis for the comparison of bids. The Agency may increase or decrease the amount of any item as may be deemed necessary or expedient, during the period of the contract.
- b. An increase or decrease in the quantity for any item is not sufficient ground for an increase or decrease in the unit price.

4. SILENCE OF SPECIFICATIONS:

The apparent silence of the specifications as to any detail, or the apparent omission from it of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality are to be used. Proof of specifications compliance will be the responsibility of the vendor.

5. **EXAMINATION OF SPECIFICATIONS AND PROVISIONS**:

The bidder shall examine carefully the proposal and the contract forms for the material contemplated. The bidder shall investigate and satisfy himself as to the conditions to be encountered, quality and quantities of the material to be furnished, and the requirements of the Special Provisions and the contract. The submission of a proposal shall be conclusive evidence that the bidder has made examination of the aforementioned conditions.

6. PREPARATION OF PROPOSAL:

- a. The bidder's proposal shall be written in ink or typewritten on the form provided.
- b. If items are listed with a zero quantity, bidder shall state unit price **ONLY** (intended for open end purchases where estimated requirements are not known). The proposal shall show a total bid price for each item bid and the total bid price of the proposal excluding zero quantity items.

7. PRICES QUOTED:

The prices quoted are those for which the material will be furnished F.O.B. Ordering Agency and include all charges that may be imposed during the period of the contract.

8. **DISCOUNT**:

No qualifying letter or statements in or attached to the proposal, or separate discounts will be considered in determining the low bid except as may be otherwise herein noted. Cash or separate discounts should be computed and incorporated into unit bid price(s).

9. SAMPLES OR BROCHURES:

Samples or brochures may be required by the agency for evaluation purposes. They shall be such as to permit the Agency to compare and determine if the item offered complies with the intent of the specifications.

10. DELIVERY OF PROPOSALS:

Proposals shall be delivered in sealed envelopes, and shall bear on the outside the name and address of the bidder as well as the designation of the contract. Proposals forwarded by U.S. Mail shall be sent first class to the address listed below. Proposals forwarded by delivery service other than the U.S. Mail or hand delivered must be delivered to the address listed below. All bids must clearly display the bid number on the envelope.

STATE OF DELAWARE
Office of Management and Budget
Government Support Services
100 Enterprise Drive, Suite 4
Dover, DE 19904

All proposals will be accepted at the time and place set in the advertisement. Bidder bears the risk of delays in delivery. Proposals received after the time set for public opening will be returned unopened.

11. WITHDRAWAL OF PROPOSALS:

A bidder may withdraw his proposal unopened after it has been deposited, if such a request is made prior to the time set for the opening of the proposal.

12. PUBLIC OPENING OF PROPOSALS:

The bids shall be publicly opened at the time and place specified by the Agency. Bidders or their authorized representatives are invited to be present.

13. PUBLIC INSPECTION OF PROPOSALS:

If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions. The bidder shall include with this designation a statement that explains and supports the firm's claim that the bid items identified as confidential contain trade secrets or other proprietary data.

14. **DISQUALIFICATION OF BIDDERS**:

Any one or more of the following causes may be considered as sufficient for the disqualification of a bidder and the rejection of his proposal or proposals:

- a. More than one proposal for the same contract from an individual, firm, or corporation under the same or different names.
- b. Evidence of collusion among bidders.
- c. Unsatisfactory performance record as evidenced by past experience.
- d. If the unit prices are obviously unbalanced either in excess or below reasonable cost analysis values.
- e. If there are any unauthorized additions, interlineation, conditional or alternate bids or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning.
- f. Non-attendance of mandatory pre-bid meetings may be cause of disqualification.

SECTION B - AWARD AND EXECUTION OF CONTRACT

1. **CONSIDERATION OF BIDS**:

The right is reserved to waive technicalities, to reject any or all bids, or any portion thereof, to advertise for new proposals, to proceed to do the work otherwise, or to abandon the work, if in the judgment of the Agency or its agent, the best interest of the State will be promoted thereby.

2. MATERIAL GUARANTY:

Before any contract is awarded, the successful bidder may be required to furnish a complete statement of the origin, composition and manufacture of any or all of the material to be used in the contract together with such samples as may be requested for the purpose of testing.

3. AWARD OF CONTRACT:

Within thirty days from the date of opening proposals, the contract will be awarded or the proposals rejected.

4. **EXECUTION OF CONTRACT**:

The bidder to whom the award is made shall execute a formal contract and bond within twenty days after date of official notice of the award of the contract.

5. **WARRANTY**:

The successful bidder(s) shall be required to extend any policy guarantee usually offered to the general public, FEDERAL, STATE, COUNTY, or MUNICIPAL governments, on material in this contract against defective material, workmanship, and performance.

6. THE CONTRACT(S):

The contract(s) with the successful bidder(s) will be executed with the Office of Management and Budget, Government Support Services acting for all participating agencies.

7. RETURN OF BIDDER'S DEPOSIT:

The deposits shall be returned to the successful bidder upon the execution of the formal contract. The deposits of unsuccessful bidders shall be returned to them immediately upon the awarding of the contract or rejection of their bids.

8. INFORMATION REQUIREMENT:

The successful bidder's shall be required to advise the Office of Management and Budget, Government Support Services of the gross amount of purchases made as a result of the contract.

9. **CONTRACT EXTENSION**:

The State reserves the right to extend this contract on a month-to-month basis for a period of up to three months.

10. TERMINATION FOR CONVENIENCE:

Contracts shall remain in effect for the time period and quantity specified unless the contract is terminated by the State. The State may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least sixty (60) days before the effective date of termination.

11. **TERMINATION FOR CAUSE**:

If, for any reasons, or through any cause, the Contractor fails to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 5 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

SECTION C - GENERAL

1. **AUTHORITY OF AGENCY**:

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due or to become due, the decision of the Agency shall be final and binding.

2. **LAWS TO BE OBSERVED**:

The contractor is presumed to know and shall strictly comply with all National, State, or County laws, and City or Town ordinances and regulations in any manner affecting the conduct of the work. The contractor shall indemnify and save harmless the State of Delaware, the Agency, and all Officers, Agency and Servants thereof against any claim or liability arising from or based upon the violation of any such laws, ordinances, regulations, orders, or decrees whether by himself or by his employees.

3. **PERMITS AND LICENSES**:

All necessary permits, licenses, insurance policies, etc. required by local, State or Federal laws, shall be provided by the contractor at his own expense.

4. PATENTED DEVICES, MATERIAL AND PROCESSES:

- a. The contractor shall provide for the use of any patented design, device, material, or process to be used or furnished under this contract by suitable legal agreement with the patentee or owner, and shall file a copy of this agreement with the Agency.
- b. The contractor and the surety shall hold and save harmless the State of Delaware, the Agency, the Director, their Officers or Agents from any and all claims because of the use of such patented design, device, material, or process in connection with the work agreed to be performed under this contract.

5. **EMERGENCY TERMINATION OF CONTRACT**:

- a. Due to restrictions which may be established by the United States Government on material, or work, a contract may be terminated by the cancellation of all or portions of the contract.
- b. In the event the contractor is unable to obtain the material required to complete the items of work included in the contract because of restrictions established by the United States Government and if, in the opinion of the Agency, it is impractical to substitute other available material, or the work cannot be completed within a reasonable time, the incomplete portions of the work may be cancelled, or the contract may be terminated.

6. **TAX EXEMPTION**:

- a. Material covered by this proposal is exempt from all FEDERAL and STATE TAXES. Such taxes shall not be included in prices quoted.
- b. Any material which is to be incorporated in the work or any equipment required for the work contemplated in the proposal may be consigned to the Agency. If the shipping papers show clearly that any such material is so consigned, the shipment will be exempt from the tax on the transportation of property under provisions of Section 3475 (b) of the Internal Revenue Code, as amended by Public Law 180 (78th Congress). All transportation charges shall be paid by the contractor. Each bidder shall take his exemption into account in calculating his bid for his work.

7. OR EQUAL (PRODUCTS BY NAME):

Specifications of products by name are intended to be descriptive of quality or workmanship, finish and performance. Desirable characteristics are not intended to be restrictive. Substitutions of products for those named will be considered provided the vendor certifies that the function, characteristics, performance and endurance qualities of the material offered is equal or superior to that specified.

8. **INVOICING**:

After the awards are made, the agencies participating in the bid may forward their purchase orders to the successful bidder(s) in accordance with State Purchasing Procedures. The State will generate a payment voucher upon receipt of an invoice from the vendor.

SECTION D - EQUAL OPPORTUNITY

1. **EQUALITY OF EMPLOYMENT OPPORTUNITY ON PUBLIC WORKS**:

During the performance of any contract for public works financed in whole or in part by appropriation of the State of Delaware, the contractor agrees as follows:

- a. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated equally during employment without regard to their race, creed, color, sex, age, or national origin. Such action shall include, but not be limited to the following: advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeships. The contractor agrees to post in conspicuous places, notices to be provided by the contracting agency setting forth the provisions of this non-discrimination clause.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, age, or national origin.
- c. The term "contractor for public works" means construction, reconstruction, demolition, alteration, and/or repair work, maintenance work, and paid for in whole or in part out of the funds of a public body except work performed under a vocational rehabilitation program. The manufacture or furnishing of materials, articles, supplies or equipment is not a public work within the meaning of this subsection unless conducted in connection with and at the site of the public work.

Revised 01/16/07



State of Delaware

Office of Minority and Women Business Enterprise Certification Application



Complete application and mail to:

Office of Minority and Women Business Enterprise (OMWBE)
Haslet Armory
122 William Penn Street
Dover, DE 19901

Telephone: (302)739-4206 Fax: (302)739-1965 Email: deomwbe@state.de.us Website: www.state.de.us/omwbe

Important Information Please Read!

Is my firm eligible?

A minority and/or women owned business (sole-proprietorship, partnership, corporation or joint venture) must meet the following criteria:

- a) Minority groups include: African Americans, Asian/Pacific Americans, Hispanic Americans, Native Americans, and Subcontinent Asian Americans.
- b) At least 51 percent owned, controlled and actively managed by minority group members or by women.
- c) Serving a for profit business with "useful business functions."
- An out-of-state company must first be certified in its home state before it can be considered for certification in Delaware. This must be a state-level certification, if available.
- There is no fee for processing your application. In addition, free assistance is available. If you have questions about the application or your company's qualifications, call (302)739-4206.
- If your business is certified by Delaware Department of Transportation (DelDOT) City of Wilmington,
 Minority Supplier Development Council (MSDC), Women Business Enterprise National Council
 (WBENC) and located in Delaware, there is a specialized shortened application. You must also attach a
 copy of your certification and mail all documents to the OMWBE.
- Also, please note that it is extremely important to provide other certifying agency documentation. This can expedite the certification process.

Document Request checklist

- Unless otherwise indicated, copies of documents are sufficient.
- Any deficiency may delay the certification process.
- Certification generally takes four to six weeks.
- An on-site visit. (The OMWBE office may schedule an on-site visit once the completed application and appropriate supporting documentation have been received).

Documents to attach to your application	Sole Prop	Part/ LLP	Corp/ S-Corp	LLC	OMWBE Use
Notarized Minority and Women Business Enterprise Affidavit form	Yes	Yes	Yes	Yes	
Copy of birth certificate, permanent resident card, passport or tribal memberships	Yes	Yes	Yes	Yes	
Last two years of your firm's tax returns (gross receipts). If not available, last two years W2 and/or 1099 forms for all owners, directors, officers and senior management.	Yes	Yes	Yes	Yes	
Copy of MBE/WBE certification from home state, if company headquarters are not in Delaware. (must be a state level certification, if available)	Yes	Yes	Yes	Yes	
Copies of any relevant licenses, certificates of training and degrees held by the company or its owners/employees	Yes	Yes	Yes	Yes	
Partnership Agreement, including any amendments, buy-out rights as well as any profit sharing arrangements		Yes			
Articles of Incorporation with all amendments		Yes			
Minutes of the last annual shareholders meeting		Yes			
By-laws and By-law Amendments		Yes			
Copy of most recent Stock Ledger		Yes			
Copy of Certificate of Organization				Yes	
Copy of Operating Agreement				Yes	

Delaware Minority and/or Women Business Enterprise Certification

Certification Application

The following is the application for Minority and/or Women Business Enterprise (MWBE) certification with the State of Delaware. All questions must be answered. Please type or print clearly.

Questions that do not apply to your firm should be marked N/A in the space provided.

The Affidavit on page 14 must be signed and notarized by a Notary Public. Faxed copies of the Affidavit will only be accepted if the notary seal has the stamped seal with the expiration date visible. Otherwise, mail the original Affidavit with the raised seal to our office.

Please return the completed application with signature and required notarization to the address below:

Office of Minority and Women Business Enterprise Haslet Armory 122 William Penn Street Dover, DE 19901

Phone: (302) 739-4206 Fax: (302) 739-1965

Web site: www.state.de.us/omwbe

Definitions

Minority and/or Women Business Enterprise

A Minority and Women Business Enterprise is a business that is at least 51 percent owned, controlled and actively managed by minority and/or women group members who are United States citizens or persons lawfully admitted to the United States for permanent residence.

The business must be a for-profit business and currently be performing a useful function.

Minorities – United States citizens or permanent residents who are African Americans, Asian/Pacific Americans, Hispanic Americans, Native Americans, Subcontinent Asian Americans, or as defined herein:

African (Black) Americans. All persons having origins from any of the Black groups of Africa and all persons having origins in any of the original peoples of the Cape Verde Islands.

Asian/Pacific Americans. All persons having origins from any of the original peoples of the Far East, Asia, or the Pacific Islands, including China, Japan, Korea, Samoa, Philippine Islands, and Hawaii. Guam, the U.S. Trust Territories of the Pacific or the Northern Marinas.

Hispanic Americans. Persons having origins from any of the Spanish-speaking peoples of México, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.

Native Americans. All persons having origins from the original peoples of North America and who are recognized as Native Americans by a tribe or tribal organization.

Subcontinent Asian Americans. All persons whose ancestors originated in India, Pakistan or Bangladesh.

Certification - A determination by the OMWBE that a for-profit business entity is a Minority Business Enterprise (MBE) and/or Women Business Enterprise (WBE).

Definitions

Ownership

The minority or woman ownership interest in the firm must be real, substantial and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The minority and women owners shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interest as demonstrated both by an examination of the substance and form of arrangements.

Control

Control will be exemplified by possession of the requisite knowledge and expertise to run the particular business. Control includes the authority to determine the direction of a business, including but not limited to capital investments and all other financial transactions; property acquisitions; day-to-day decisions; contract negotiations; legal matters; selection and hiring of officers, directors, and employees; operating responsibility; cost-control; income and dividend matters; and the rights of other shareholders or partners.

The minority and/or women owners must hold the highest officer position in their companies, example chief executive officer or president.

The minority and/or women must demonstrate that they possess the experience, expertise and knowledge to operate their particular types of business.

Expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the company is insufficient to demonstrate control. Women and/or minority owners must also verify that they hold any licenses or certification required by the type of business in which they are engaged.

Definitions

Minority Business Enterprise (MBE) - A for profit business in which at least 51% of the beneficial ownership interest and control are held by a minority or minorities. In the case of a corporation, minorities must hold at least 51% of voting interest.

Minority & Women Business Enterprise (MWBE) - A for-profit business in which at least 51% of beneficial interest and control is held by minority women or by an equal combination of minorities and women. In the case of a corporation, women and minorities must also hold at least 51% of voting interest.

Women Business Enterprise (WBE) - A for-profit business in which at least 51% of beneficial interest and control is held by women. In the case of a corporation, women must also hold at least 51% of the voting interest.

Useful Business Function

A useful business function is one, which results in the provision of materials, supplies, equipment or services to consumers in the State. A business acting as a conduit to transfer funds to a non-minority business does not constitute a useful business function unless doing so is a normal industry practice.

Benefits of Certification

Current certified minority and/or women owned firms are eligible to be listed in the State of Delaware Directory of Minority and Women Owned Businesses which is circulated to all state and local government agencies.

Recertification

At the ends of three years from original cerification date, firms must submit the recertification affidavit to remain actively visible in the State of Delaware's Minority and/or Women Business Enterprise database.

Eligibility

A minority and women owned business (sole-proprietorship, partnership, corporation or joint venture) must meet the following criteria:

- a) Belong to a minority group: African Americans, Asian/Pacific Americans, Hispanic Americans, Native Americans, and Subcontinent Asian Americans. (Please reference above definitions)
- At least 51 percent owned, controlled and actively managed by minority group members or by women.
- c) Serving a for profit business with "useful business functions." (Please reference above definitions)

Reasons for denial (please note the below may include but not be limited to)

- a) A business located in a state other than Delaware must first obtain state-level certification in its home state, if such certification is available. "Home state" is defined as the state the company's headquarters are located.
- b) All securities, which constitute ownership and/or control of a corporation for the purpose of establishing it as a MWBE, must be held directly by minorities or women. No securities held in trust, or by a guardian for a minor, shall be considered as held by a minority or women in determining the ownership or control of a corporation.
- If the business operations do not reflect the ownership shown on paper.

- d) Firm is not a for-profit business
- e) Firm has provided false or misleading information
- f) Control will not be deemed to exist in cases of simple majority or absentee ownership, or when a non-minority/non-female owner or employee of the firm is disproportionately responsible for its operation.
- g) The firm shall not be subject to any formal or informal restrictions through, for example through, bylaws provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevents the minority and women owners, without the cooperation or vote of any owner who is not a minority or women for making a business decision of the firm.
- h) If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities and shall not be considered as MWBE within the meaning of the definition. Where the actual management of the firm is contracted out to individuals other than the owner, those person who have the ultimate power to hire and fire the managers, can, for the purpose of this
- i) The certification application was submitted incomplete.

How to Apply

- Applications and additional information are available by calling the Office of Minority and Women Business Enterprise at (302) 739-4206 or visiting the web site www.state.de.us/omwbe
- Complete an application for certification and provide required documentation (ethnic status of minority owner(s), financial records, on-going business activity, etc.)
- Provide access to its business facilities and key personnel for state certification on-site visit.

WHERE TO APPLY:

Submit completed applications to:
Office of Minority and Women Business
Enterprise
Haslet Armory
122 William Penn Street
Dover, DE 19901

Frequently Asked Questions

Q: Does certification cost money?

A: No

Q: Are there any set asides for MWBEs?

A: No

Q: Does my certification expire?

A: At the end of three years from original certification date.

Q: Will I be notified of all procurement opportunities?

A: No, however, the OMWBE will continue to research bid opportunities and assist in your effort. We are consistently working on ways to improve communication but strongly encourage you to visit the respective resources.

Q: What is the best way to communicate with the OMWBE?

A: Email. Please check your email daily for procurement opportunities.

Q; Do I have to register with any other agency?

A: Yes. There are multiple agencies that have their own bidders list. Please check OMWBE's web site for each respective agency. For example, Government Support Services and the Department of Technology and Information have vendor registration processes.

State of Delaware Minority and/or Women Business Enterprise Application

All completed applications must be returned with the appropriate requested documents listed.

Please type or print clearly

OMWBE use only: Application Date:

Mail application to:
Office of Women and Minority Business Enterprise
Haslet Armory
122 William Penn Street
Dover, DE 19901

If you have any questions regarding the completion of this application, please contact us at (302) 739-4206.

Note – This section must be filled out in its entirety for the application to be processed. Incomplete applications will not be processed.

1. Business Name(s), Contact Informatio	n. Feder	al Emp	ovee	Identifi	ication Nu	ımber	or Social Security
Number(EIN/SSN)	,		,				,
Legal Name of Firm:							
Doing Business As (If applicable):							
Federal E.IN or SSN:	E-Mail A	ddress:					
Address line 1:							
Address line 2:							
City			State	Zip	o Code	Count	ry
Telephone Number:		Extens	ion:	Fax N	umber:		
Company Web Site Address: Corp							Joint Venture
Date firm began doing business (date of firs	t contract	or sale)				
* Limited Liability Corporation ** Limited Liability Partnership			/				
2. Primary owner applicant information							
Name:		Title					
Home Address:	City:			State:	Zip Co	ode:	Country:
Telephone Number:		Exten	ension: Fax Number:				
E-Mail Address:							
Date owner acquired controlling interest?							
Sex: M F		Ethr	nic Gro	oup:			
IIS Citizen or Permanent Resident: No	Γ	7					

3. Firm is applying as				1				
Minority Business En					Business Ente	<u>erpris</u>		
African American	_=	ian American			n American		Asian Am	
Hispanic American	+=	ative America	n		nic American		Native Ar	
Subcontinent Asian	│	her		_=	ntinent Asian		White An	nerican
				Other				
								1
4. Describe, in detail,	-	• •		•	ness provides	. Atta	ch additie	onal pages
and/or the company's	catalo	g or inventor	y list, if need	led.				
5. Five digit North Am								
(To assist you in dete	rmining		· · · · · · · · · · · · · · · · · · ·		nsus.gov/naid			
1. 2.		3.		4.		5.		6.
6. Type of Business								
6. Type of Business Building trade		Manufact	urer	Other				
6. Type of Business Building trade Consultant			urer	☐ Other				
Building trade Consultant		Supplier	urer	Other				
Building trade Consultant Generalized service		Supplier Highway		Other				
Building trade Consultant Generalized service Licensed profession		Supplier		Other				
Building trade Consultant Generalized service		Supplier Highway		Other				
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8. Is any owner or board	member of	the business. a	n owner or former o	owner of	f another firm engaged in
the same or similar typ					anomor mm ongagoa m
	(If yes, ident				
9. Are there any written,	oral, or impl	ied agreements	between persons a	associa	ted in any manner with
the firm concerning its				No	Yes
-		•			
10. Please list the gross	receipts of I	ast two years			
(A) Year Ending:	Gross Rec	eipts:	-		
(D) Voor Ending:	Cross Bos	ainto.	_		
(B) Year Ending:	Gross Rec	eipis.			
			<u></u>		
				_	
11. Number of employees	s	Full time:			
		Part time:			
	_ ;	Seasonal (appro	ximate):	_	
12. List names and titles	of persons	who perform th	e following function	ns. If m	ore than one. indicate
what percent each pe					
1	Name	-	Ethnicity		Gender
Financial Decisions					
Estimating & Bidding					
Negotiating & Contract					
Execution					
Personnel Management					
Field/Production					
Operations Supervisor					
Office Management					
Marketing/Sales					
Purchasing of Major					
Equipment					
Authorized to Sign					
Company Checks (for					
any purpose)					

13. Identify persons or firms	who provide	Legal Acc	ounting, and Bankin	a services:
Attorney:	THO PIOVIGE	Contact:	January, and Bankin	ig 00. 11003.
Phone:	Fax:	Contact		Email:
Address:	T GA.			Email.
Accountant:		Contact:		
Phone:	Fax:			Email:
Address:			<u> </u>	
Bank:		Contact:		
Phone:	Fax:	•		
Address:	•			
14. If the business is a corpo	ration or LLC	;, please lis	t the following infor	mation:
a. Total shares authorized:				
b. Total shares issued to date			- 0 1 1 10	
c. Are there any restrictions the				
	vs or Articles C	n incorporat	ion, or any other doct	uments? No Yes (If yes,
please explain below)				
15. List the three largest con				
each customer's name ar	nd company o	or organizat	tion, the dollar amou	unt of each contract or sale,
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16. Has this firm or other firm(s) owned by any of its current owners or officers ever been denied certification by the OMWBE or any other certifying entity (check one)? No; Yes (If yes, provide the name of the certifying organization and the reason(s) given for denial, below. Attach copies of						
any relevant documen	any relevant documents (letters, appeal documents, etc.).					
L						
17. Debarment						
	other company owned in f	full or part by any of this company's owners and/or				
		with the State of Delaware? \(\bar{\text{No}}\); \(\bar{\text{Yes}}\).				
	<u> </u>	· · · · · · · · · · · · · · · · · · ·				
		other certifying agency? If yes, provide the name(s)				
	ınization(s), below, and att	tach letters or other documents verifying such				
certification.						
☐ No ☐ Yes Name	Date Certified	Expiration Date				
a.	Date Certified	Expiration bate				
b.						
C.						
d.						
e.						
f.						
		and Women Business Enterprise:				
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Optional Questions

You are not required to answer the following questions and the answers will not affect your company's eligibility for certification. However, the answers will help OMWBE to identify business opportunities that may be suited to your company. Answers may be estimated; exact figures aren't necessary.

For all companies
How many years has your company been conducting business with you as owner?
How many contracts, subcontracts, and/or sales has your company completed during the last 12 months?
What is the largest and set on handred an education and set of in the great OA see that
What is the largest contract, subcontract, or sale your company completed in the past 24 months?
Has your company done any business with government? No; Yes
If yes, what level of government (check all that apply): Federal; State; Local
Has your company done any business with government in the State of Delaware? No; Yes
Number of government contracts, subcontracts, or sales completed (estimate):
For Construction-Related Companies Only (not including suppliers of construction materials)
What is your company's bonding capacity? \$ (indicate "unknown" if you do not know)
What % of your business is direct contracting?
What % of your business is subcontracting?

State of Delaware Minority and/or Women Business Enterprise Affidavit

Hereafter, "the Business" refers to

Business Name

I understand the illegal nature of receiving public or private funds or other property as a consequence of false representation as to the minority status of the business and do herein certify under penalty imposed by Delaware statutes that the information provided is correct and said information herein may be used for the purposes of certifying the business as a Minority and/or Women Business Enterprise. Any false representation will be grounds for denying certification or initiating decertification in the future.

I agree to make available for inspection to the MWBE office any such materials that may be required to substantiate the degree of minority and women ownership and control of the business. I agree to arrange for on-site inspections of the business' facilities in order to verify information provided in this document.

I agree to provide written information relative to any future change in ownership and/or management of the business to the MWBE office within two weeks of the occurrence of the change. I acknowledge that failure to timely submit required change of status documentation might result in the decertification of the business.

I understand that the certification expiration is three years following the initial date of certification. I further understand that the business must apply for recertification prior to the expiration.

Type or Print Name of Owner	
Signature of Owner	Date
Title	
Subscribed and sworn to before me this day ofa.d.	Month, Year
Signed NOTARY PUBLIC IN AND FOR THE	
County of	Notary Seal
State	
My Commission Expires Date	

MASTER PROCESSING AGREEMENT SCHOOL YEAR July 1, 2008—June 30, 2009

Agreement is made by and between the following: **State Distributing Agency:** State Agency **Agency Contact** Address City, State, Zip Code Telephone Fax E-Mail and the following processing (Processor) company: **Company Name Company Representative Address** City, State, Zip Code **Contact Person** Telephone Fax E-Mail Commodity (ies) Processed: and is made with respect to the following facts: The United States Department of Agriculture (USDA) has made federally donated foods (DF) available to the State Distributing Agency (DA) for distribution to eligible Recipient Agencies (RA), using the following DF, as identified on attached End Product Data Schedules. The DA is desirous of arranging with the Processor for the production of end product(s) as described on the attached End **Product Data Schedule(s) at the following Processor's plant location(s):** Street, City, State, Zip Contact Person Phone # Plant Name Fax #

(For additional plants, add an attachment)

This Agreement is governed by the current and applicable sections of Title 7 Code of Federal Regulations, Parts 210 and 250, and any subsequent changes are also included as part of this Agreement.

If any of the above information changes during the **July 1, 2008 — June 30, 2009,** school year, please inform the state agency as soon as possible.

In consideration of the terms and conditions contained within this Agreement, the parties agree as follows:

1. **AGREEMENT INTENT**

This Agreement sets forth the contractual obligations under which the Processor may utilize DF to manufacture and deliver specified end product(s) to eligible RA's to ensure the return of quantity, quality and value of such DF.

2. CATEGORIES OF DONATED FOODS IN PROCESSING

The Processor shall adhere to the processing and handling procedures applicable to the category of DF to be processed under this Agreement as defined below:

- A. **<u>Fully Substitutable Donated Foods</u>** Such DF may be substituted, interchanged, or commingled in storage and production with a commercial food of the same generic identity and of equal or better quality in compliance with 7CFR 250.30(f)(1) and (2).
 - 1) The Processor shall maintain documentation that the commercial food interchanged, commingled, or substituted for the DF is:
 - a. Of U.S. origin; and
 - b. Identical or superior to the DF specification as evidenced by certification performed by, or acceptable to, the applicable federal acceptance service.
- 2) The Processor may utilize substitutable DF in the manufacture of end product sold commercially, but shall not otherwise sell or dispose of the DF in bulk form. Should the Processor elect to utilize a commercial food in anticipation of replacement with DF, the RA or DA cannot guarantee such replacement and assumes no liability for such replacement.
 - 3) The Processor must be able to demonstrate that purchases of commercial foods are sufficient to meet commercial production needs.
 - 4) If use of concentrated skim milk to replace donated nonfat dry milk is approved by the DA, the Processor must comply with 7CFR Part 250.30 (f)(3).
- B. <u>Limited Substitutable Donated Foods</u> 7CFR Part 250.30 (f) allows substitution of commercial bulk pack poultry parts for USDA donated bulk pack poultry and poultry parts.
 - 1) Limited substitution is an option available to processor, not a mandatory practice. Participating in limited substitution requires the processor to submit and obtain FNS and AMS approval of a poultry substitution plan.
 - Restrictions include, but are not limited to, prohibition against substitution of backhauled commodity product.
 - 3) Substitution of commercial poultry or poultry parts for the commodity poultry or poultry parts must be performed using poultry of U. S. origin that is equal or superior to the USDA specification for commodity poultry.
 - 4) Poultry processors must indicate in **Article 35** of this contract the option under which they are processing poultry.
 - 5) If a processor opts not to adopt the limited substitution option for poultry, the processor shall meet all provisions stipulated for nonsubstitutable commodities.
- C. <u>Nonsubstitutable Donated Foods</u> Donated beef or pork shall not be interchanged, commingled or substituted with a commercial food that could be used in place of the DF in the product formulation, unless otherwise specified in **Article 35**.

The processor shall store such DF apart from all commercial foods and process them apart from regular commercial production. The Processor shall return all products produced above guaranteed minimum return on the EPDS. If actual yield falls below the guaranteed return, the Processor shall make up the difference between actual and guaranteed return by either:

- 1) Utilizing commercial food that is of U.S. origin and identical or superior to the DF specification as evidenced by certification performed by, or acceptable to, the applicable federal acceptance service. A USDA certificate must be obtained to certify the quality of replacement beef and pork; or
- 2) Reimbursing the RA or DA the value of DF that would have been used to produce the end product.

3) **PROCESSING ARRANGEMENTS**

The Processor shall maintain delivery and/or billing invoices, refund applications, canceled checks or other documentation as applicable, to substantiate that proper value pass through occurred or the proper fee for service was charged.

Arrangements for processing DF into various end products will be based on one of the following:

A. Donated Food Value Pass-Through System

The processing of DF is incorporated into the Processor's normal manner of business, including production, pricing, and delivery of the end product. The specific value of DF shall be established based on the designated USDA value. The Processor shall ensure that the full value of the DF contained in the end product shall be passed on to the eligible purchasing RA. The dollar pass-through value of the DF contained in the end product shall be provided to the RA either by the DA or the processor at the option of the DA. With the concurrence of the DA, the Processor shall select one of the following value pass-through systems in Article 37 of this Agreement. The DA reserves the right to disallow continued use of a value pass-through system if poor performance is indicated.

1) <u>Direct Sales</u>

a. Discount System

The Processor shall invoice the RA at the net case price, which shall reflect a discount for the value of the DF established in this Agreement. Only when the end product has been delivered to the RA or the RA's designee may DF inventory be reduced.

b. <u>Refund System</u>

The processor shall invoice the RA at the commercial/gross price of the end product. Refunds that reflect the value of the DF contained in the end products shall be made to the RA upon proof of purchase. Refund payments shall be initiated or paid as follows:

- (1) The RA shall submit a refund application to the Processor within 30 days from the end of the month of the date of delivery. RA's may submit refund applications to the processor on a quarterly basis if the total refund due is \$25 or less during the quarter.
- (2) Within 30 days of the receipt of the refund application, the Processor shall compute the amount and issue payment of refund directly to the RA. Processors may issue payment of refunds on a quarterly basis if the total payment due to that RA is \$25 or less during the quarter. Sales cannot be reported and the inventory cannot be reduced until refunds are actually issued.
- (3) Copies of the refund application and payment to the RA's shall be forwarded to the appropriate DA by the Processor with the monthly performance report.

2) <u>Indirect Sales</u>

a. <u>Discount System (Hybrid System)</u>

The Processor shall sell to the distributor at the commercial/gross price. The distributor will invoice the RA at the net case price plus the distributor's markup. The net case price shall reflect a discount equal to the full value of the DF established in this Agreement. The distributor shall apply for a refund or credit from the Processor for the full value of the DF. Sales verification is required for this pass-through system. (See Article 4.)

b. <u>Refund System</u>

The Processor shall sell to the distributor at the commercial/gross price. The distributor will invoice the RA this price plus the distributor's markup. Refunds shall be made to the RA by the Processor that reflect the value of the DF contained in the end products upon receipt of the refund application. The refund payment shall be initiated and paid the same as listed above in paragraph 1) b. 1 through 3.

3) Other Value Pass-Through Systems

Processors are permitted to use alternate value pass-through systems if approved by the DA and FNS. These systems must comply with the sales verification requirements outlined in 7 CFR 250.19 (b)(2) or an alternate verification system as approved by the DA and FNS.

B. Fee-For-Service System

A "fee-for-service" system is a price by pound or by case representing a Processor's cost of ingredients (other than the DF), labor, packaging, overhead, and other costs incurred in the conversion of the DF into the specified end product. A discount or refund per case is not established; consequently there is not credit for the value of DF. The net price is based on the charge per pound or per case for processed finished product. End products produced under fee-for-service Agreements may be delivered and invoiced to the RA in one of the following ways:

- 1) The Processor delivers the end products directly to the RA or RA's designee and bills the RA for the agreed upon fee for service.
- 2) Delivery is made by commercial distributors. The Processor shall not sell end products directly to the distributor. Two options for arranging payment for end products are:
 - a. A dual billing system whereby the RA is billed by the Processor for the fee for service and the distributor bills the RA for storage and delivery of end products; or
 - b. The Processor arranges for the delivery with a distributor for the RA. The Processor's invoice must include both the processing fee and the distributor's charges as separate identifiable charges.
 - c. Processor arranges for delivery and billing by a distributor in accordance with FD-025: Fee for Service Billing Methods Through a Distributor. Processor retains financial obligations for sales to ineligible recipients. The distributor never assumes this obligation as the Processing Agreement is between the Processor and DA.

4. PROCESSOR SALES VERIFICATION

If delegated by the DA for discount sales made by distributors the Processor shall verify sales conducted under the terms of Article 3.A.2. and 3.A.3. Verification shall include a statistically valid sample of reported sales in a manner, which ensures a 95 percent confidence level. All sales reported during a specific period shall be verified at least semiannually. The Processor shall verify that sales were made only to eligible RA's and that the value of the DF was passed through to the RA's. Sales verification findings shall be reported as an attachment to the December and June performance reports in a format approved by the DA. At the same time this report is submitted, the Processor shall submit to the DA a corrective action plan designed to correct problems identified in the verification effort. This plan will be subject to the DA approval. The DA may assess a claim against the Processor if, after review, it is determined that the value of the DF has not been passed on to the RAs or if the end products were improperly distributed.

5. END PRODUCT DATA SCHEDULE

The End Product Data Schedule (EPDS), Summary End Product Data Schedule (SEPDS) and all related instructions are an integral part of this Agreement. The Processor agrees to the <u>effective date established</u> by the DA on the SEPDS for the item(s) listed thereon and the Processor <u>shall not</u> be permitted to reduce inventory for any end products which were sold prior to the effective date so established.

Changes in End Product formulation, or return must be reflected on new or replacement EPDS or SEPDS and submitted for approval.

Specific details are contained in the EPDS instructions. The following information will be included:

- A. End Product Description
- B. Product Formulation
- C. End Product Return

Specific details are continued in the SEPDS instruction. The following information will be included:

- A. Selected Data from EPDS
- B. Contract Value of Commodity
- C. Pricing Structure of End Product

Any credits (i.e., buyback parts and by-products such as bones, broth, etc.) must be listed separately on the SEPDS.

6. **PACKAGING**

The Processor shall package all end products in accordance with acceptable standards within the Processor's industry and in conformity with Federal and State requirements, which may be applicable during the period of this agreement. Damaged cases may be rejected at no cost to the DA or the RA.

7. **LABELING**

The Processor shall label the end product container in accordance with applicable federal labeling requirements. In addition, the Processor shall adhere to the following label requirements:

- A. The exterior shipping container, and where practical the individual wrappings or containers within the exterior container, of end product containing nonsubstitutable DF as defined in Article 2.C shall have clearly shown on the label the legend "Contains Commodities Donated by the United States (U.S.)

 Department of Agriculture. This product shall be sold only to eligible Recipient Agencies. "
- B. The Processor shall obtain approval through procedures established by FNS in conjunction with the Food Safety Inspection Service (FSIS) and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture, and National Marine Fisheries Service of the U.S. Department of Commerce, or other applicable federal agency for all labels which make any claim with regard to an end product's contribution toward meal requirements of any Child Nutrition Program.
- C. The Processor may be required to obtain a Child Nutrition (CN) label for all end products containing meat, poultry, fish or a meat alternate such as cheese or peanut butter. If a CN label is required and requested in Article 35 the processor must: (1) submit a copy of the approved CN label to the DA prior to requesting the DA to order DF or picking up DF from RA; and (2) affix the CN label to each case of end product to be sold to eligible RAs.

8. QUALITY CONTROL (QC)

As an attachment to this Agreement, the Processor shall provide a written description of the Processor's QC system to the DA. By signing this Agreement, the Processor assures that an effective QC system will be maintained for the duration of this Agreement.

A. The Processor shall transport DF picked up from the DA or the RA; receive, handle, store and deliver end product in a safe and sanitary manner and at the recommended temperature for the specific DF and end product covered by this Agreement.

- B. The Processor, with the concurrence of the DA and USDA, may refuse a delivery of DF directly to the Processor's plant or to his authorized storage agent, which does not meet the federal specifications under which it was purchased and shipped.
- C. All end product produced under this Agreement shall be processed according to the health and sanitation standards for plant facilities and food processing established by the locality or state in which the Processor's plant is located or by the applicable federal standards, whichever are higher.
- D. At the option of the DA, samples may be pulled from delivered end product for laboratory testing. The Processor shall pay costs of such tests only if product sample tested fails to meet either Agreement specifications or quality and wholesomeness standards.
- E. The Processor shall maintain end product batch identification in the event end product is rejected upon delivery. End product failing to meet Agreement specifications or wholesomeness standards shall be rejected by the DA and the Processor so notified. The Processor shall be given fifteen calendar days from this notice of rejection to negotiate removal of rejected product and replacement of an acceptable end product. If agreement is not reached, the DA or purchasing RA shall have the right to purchase the same or similar product on the open market at the Processor's expense. If agreement is not reached, the DA is to arrange removal of rejected product. The DA shall proceed to authorize removal and destruction at Processor's expense.

9. **INSPECTION AND GRADING REQUIREMENTS FOR PROCESSING**

The Processor shall be required to provide inspection and/or acceptance and certification as follows:

- A. <u>Continuous Wholesomeness Inspection</u> When donated meat or poultry products are processed or when commercial meat or poultry products are incorporated into an end product containing one or more DF, all processing shall be performed in plants under continuous inspection by FSIS personnel, or State meat and poultry inspection personnel in those states certified to have programs at least equal to the federal inspection program.
- B. Acceptance Service Grading All donated meat and poultry nonsubstitutable and limited substitutable processing shall be performed under AMS certification All commercial products bearing an item code identical to the commodity item code must be produced under AMS certification. Under no circumstances shall the Processor set up production runs for the purpose of circumventing this requirement.
 - 1) The cost of this service shall be borne by the processor.
 - 2) Exemptions in the use of acceptance service graders will be authorized on the basis of each order to be processed provided the Processor can demonstrate:
 - a. That even with ample notification the Processor cannot secure the services of a grader;
 - b. That the cost for a grader is unduly excessive, as determined per order by the DA, relative to the value of food being processed and that production runs cannot be combined or scheduled to enable prorating of the cost of services among the purchasers of end products; or
 - c. That the documented urgency of the RA's need for the end product precludes the use of acceptance services
 - d. There shall be no blanket exemptions. The DA reserves the right to verify the Processor's claim for exemption.
 - 3) Copies of all certification forms issued by AMS graders for donated meat or poultry processing shall be provided to the DA with the monthly performance report.
 - 4) At the option of the DA, and as detailed in Article 35 of this Agreement, other DF may be required to be processed under the applicable federal acceptance service including the certification that a commercial food authorized to be substituted for a DF is identical or superior to the DF specifications.

10. **RESERVED**

11. **DONATED FOOD CONTAINERS**

The Processor shall return to the DA or RA for which the DF was processed, all funds received from the sale of DF containers. Refund of such funds shall, at the option of the DA, be in the form of a cash payment or applied as credit. If credit is selected, it must be clearly identified on the invoice. If the containers are sold for commercial reuse, all USDA restrictive legends or markings shall be completely and permanently obliterated or removed by the Processor prior to resale.

12. **BY-PRODUCTS OF DONATED FOOD PROCESSING**

Salvageable material, not utilized in the end products, that is produced or derived from manufacturing processes employed in the processing of DF, shall be disposed of in such a manner as to realize the greatest value possible for the material. Such material shall, with the concurrence of the DA, be handled as follows:

- A. The by-product, if agreeable to the RA for which the DF was processed, shall be accumulated and returned in a sanitary and wholesome manner to the RA; or
- B. At the option of the DA the Processor shall return to the DA or RA for which the DF was processed all funds received from the sale of salvageable by-product material. Return of such funds shall at the option of the DA be in the form of a cash payment or a reduction in the selling price of the end product based on the following:
 - 1) The actual value received from the sale of the by-product by the Processor
 - 2) The fair market value of the by-product at the time it is further processed or refined by the Processor.
- C. Special handling instructions and dispositions of any by-product shall be detailed in **Article 35** of this Agreement.

13. TRANSFERS OF USDA DONATED FOODS

Donated Foods (DF) may be transferred only between DA's or RA's with the concurrence of the DA and FNS if applicable. All transfers of DF shall be documented. Such documentation shall be maintained in accordance with Article 16. C.

14. **INVENTORY REDUCTIONS**

A. Fully Substitutable Donated Foods

For all end products utilizing a substitutable DF, the amount of DF actually contained in the end product as identified in the EPDS shall be the only basis for inventory reduction on the monthly performance report. The reduction in inventory can be shown only after there has been pass through to the RA of the value of the DF.

B. Nonsubstitutable and Limited Substitutable Donated Foods

For all end products utilizing nonsubstitutable or limited substitution DF inventory reductions to monthly performance reports shall be made based on the actual amount of DF used to produce the end product. The finished goods inventory may be reduced only upon delivery to eligible RA or RA designee.

15. **PERFORMANCE REPORTING**

The Processor shall submit monthly reports pertaining to performance under this Agreement to the DA postmarked or transmitted electronically no later than 30 days after the close of the reporting period. If no activity took place during the reporting month, a performance report shall be submitted to reflect no activity. Negative inventory shall be reported on monthly reports i.e. negative inventory resulting from sales of end products containing substituted commercially purchased foods meeting the standards specified in Article 2. If sales are made using a refund system, the sales cannot be reported and inventory cannot be reduced until a refund is actually issued.

The DA will monitor Processors to ensure that the quantity of DF on hand does not exceed a six-month supply based on the Processor's average monthly usage.

If sales verification on discount sales is delegated to the Processor findings shall be reported as an attachment to the December and June performance reports in a format approved by the DA.

Processors failing to submit monthly performance reports within the established time limits will be considered in noncompliance with this Agreement and this may result in Agreement termination by the DA.

Monthly performance reports shall be submitted only in a DA approved format, which shall include:

- A. A List of RAs by name and code number (if applicable) purchasing end products under this Agreement;
- B. DF inventory at the beginning of the reporting period;
- C. Total quantity of DF received during the reporting period specifying the sources of such DF such as backhaul from the DA or RA, direct shipments arranged by the DA, and/or transfers into the DA's or RA's account and year to date totals;
- D. Total number of units/cases of approved end products by product identification code or brand name delivered to each eligible RA during the reporting period for which the RA has received a discount or refund;
- E. Total number of pounds of DF reduced from inventory and year to date totals
- F. DF inventory at the end of the reporting period;
- G. A certification statement that sufficient DF is in inventory or on order to account for quantities needed for production of end product for State processing contracts and that the Processor has on hand or on order adequate quantities of foods purchased commercially to meet the Processor's production requirements for commercial sales.

16. **ACCOUNTABILITY AND RECORDS**

The Processor shall fully account for all DF delivered or carried forward from a previous contract year into its possession by the production and delivery of an appropriate number of end products specified in this Agreement to eligible RA's. Donated Food (DF) or the value thereof not so accounted for shall be the liability of the Processor. All records and documents to substantiate information provided on reports shall be maintained on file for a period of three years from the close of the federal fiscal year to which they pertain unless longer retention is required for resolution of an audit, litigation, or State law (refer to Article 35). Accountability records shall include but not be limited to the following:

- A. <u>Production Records</u> Processor <u>is</u> obligated to meet DF usage in production stated on the EPDS and shall be liable for shortages and overages between that stated usage per case of end product and the actual usage per case of end product. Production records shall include:
 - Daily or batch production records to substantiate actual DF or substituted commercial ingredient usage per case of end product. At a minimum such records shall consist of end product formulation or batch recipes; production dates, batch identification and/or periods of production; quantity of DF or substituted commercial food placed into production for the period; and quantity of end product produced during the same period of production.

- 2) Quality control records as required by Article 8, end product labeling and any in-plant quality control records used to assure proper formulation, packaging, net weight, bacteriological safety, and other controls to assure end product quality and wholesomeness.
- 3) Grading certificates and reports for meat and poultry issued on incoming DF or substituted commercial food; during formulation and production of the end product; and on the outgoing end product by the applicable federal acceptance service.
- 4) Authorization letters from the DA waiving federal acceptance service requirements for a specific production run.
- B. **Perpetual Inventory of Donated Food** The Processor shall maintain accurate and complete records with respect to receipt, usage, disposition, inventory of DF, load out check sheets, bills of lading, signed delivery tickets, and any other shipping and receiving documents to substantiate delivery of DF or substituted commercial food in the end product to the DA or their authorized agent.

C. Other Records

- 1) Quality of Commercial Food. Refer to Article 2.A.1.
- 2) Documentation of Value Pass-through or Fee for Service. Refer to Article 3.
- 3) Processor Sales Verification. Refer to Article 4.
- 4) Transfers of DF. Refer to Article 13.
- 5) Performance Reports. Refer to Article 15.

17. **AUDITS**

A. **CPA Audits**

Any Processor which meets the definition of a multi-state Processor as defined in 7 CFR Part 250.3 is subject to the following audit requirements.

- 1) Multistate Processors, which receive more than \$250,000 each year in DF, shall obtain an independent CPA audit for that year. Multi-state Processors which receive \$75,000 to \$250,000 in DF each year shall obtain an independent CPA audit every two years. Those, which receive less than \$75,000 in DF, each year, shall obtain an independent CPA audit every three years. The costs of the audits including those costs associated with training shall be borne by the processors. All audit requirements are to be met as stipulated in Section 7 CFR Part 250.18. For audit purposes, the total value of the DF received shall be computed by adding the value of food received under all states commodity processing programs.
- Noncompliance with this audit requirement shall render the Processor ineligible to renew or enter into another Agreement with any contracting agency until the required audit has been conducted and deficiencies corrected.

B. Right of Review and Audit

Representative of the DA, USDA and General Accounting Office shall have the right to inspect the DF and substituted commercial food in the possession of the Processor; the facilities used in handling, storing, processing, and transporting; methods and procedures used by the Processor and/or his agent in carrying out the requirements of this Agreement; and all records and substantiating documentation required by this Agreement, during the Processor's normal working hours. When requested, the Processor shall furnish such representatives with samples of end product taken from a production run for testing.

18. **LIABILITY FOR DONATED FOODS**

The Processor shall be financially liable for the value of all DF in inventory. Any reduction in financial liability can only be accomplished by inventory reductions as permitted and documented under Articles 3, 13, 14, and 16.

A. Substitutable Donated Foods

The Processor shall replace any unaccounted for, loss of, damage to, or improper use of, DF while in possession of the Processor with commercial food in compliance with Article 2.A.1.

The Processor shall be liable for replacement or payment for any DF, whether it is book or physical, in the event a claim is placed by the DA.

B. Nonsubstitutable and Limited Substitutable Donated Foods

The Processor shall be responsible for loss of, damage to, or improper use of DF prior to delivery to the RA or RA's designee. Losses shall be promptly reported to the DA with a complete explanation of the circumstances. Any claim action for the DF shall be determined by the DA. If a claim is required, the Processor shall, at the option of the DA:

- 1) Replace the DF with an equal quantity of like in kind commercial food that is identical or superior to the DF specifications as required under Article 2.A.1. or
- 2) Pay the DA an amount equal to USDA's most recent per pound cost information on acquiring and delivering replacement food, relative to the time of the inability to account for loss of, damage to, or improper use of the DF, or the current per pound value established by this Agreement.

19. **INVENTORY PROTECTION**

Processor shall furnish to the DA a surety bond obtained only from a surety company listed in the Department of Treasury Circular 570, Surety Companies Acceptable on Federal Bonds, an irrevocable letter of credit, or an escrow account. Such bond, letter of credit, or escrow account shall be made payable to the DA. The bond shall guarantee that the processor shall faithfully account for, return, or pay for all of the DF received or carried forward, in accordance with this Agreement.

Inventory protection is required by the DA prior to the delivery of DF to the processor. The minimum amount of the bond, letter of credit or escrow account, shall be determined by: value of the DF on hand and on order minus anticipated usage rate during the Agreement period. The bond shall remain in effect until all donated food is properly accounted for, paid for or returned in accordance with this Agreement. Liability for loss is provided in Article 18 of this Agreement.

20. **AGREEMENT TERMINATION**

This Agreement may be terminated immediately at the option of the DA for noncompliance of its terms and conditions by the Processor or if any right in favor of the DA is threatened or jeopardized by the Processor and/or his agent. This Agreement may be terminated by either party upon 30 days written notice to the other. Disposition of DF inventory with the Processor or payment of value thereof shall be based on the following:

- A. When this Agreement is terminated or not renewed the Processor at the option of the DA regarding nonsubstitutable DF shall:
 - 1) Return the DF to the DA; or
 - 2) Pay the DA an amount equal to USDA's most recent cost information on acquiring and delivering replacement food relative to the time of termination; or
 - 3) Pay the DA current per pound value established by this Agreement; or
 - 4) Pay the Commodity Credit Corporation (CCC) unrestricted sales price.
 - B. When this Agreement is terminated or not renewed the Processor at the option of the DA regarding substitutable DF shall:
 - 1) Return the DF to the DA to a destination designated by the DA at Processor's expense; or,
 - 2) Replace the DF with commercial foods of identical or superior to quality as certified in accordance with Article 2 of this Agreement and deliver such foods to the DA to a destination designated by the DA at the Processor's expense; or,

- 3) Pay the DA for the DF based on USDA's most recent cost information on acquiring and delivering replacement made relative to the time of termination; or,
- 4) Pay the DA for the DF based on the current per pound value established by this Agreement; or,
- 5) When feasible and with the concurrence of any affected DA with which the Processor has an agreement transfer all DF inventory of the DA to the account of the affected DA or,
- 6) Pay the CCC unrestricted sales price.

21. **ASSIGNMENT/DELEGATION OF RESPONSIBILITIES**

The Processor shall not assign and/or delegate any of the duties and/or responsibilities to process DF under this Agreement to any party either by way of subcontract or any other arrangement without the prior written consent of the DA. If a subcontract is approved, the Processor remains responsible as prime contractor to ensure that DF is accounted for and processed according to the terms and conditions contained in this Agreement and is obligated to inform the subcontractor of these requirements. A subcontractor Agreement (Addendum No. 1) must be filled out for each contractor and included with this Agreement when submitted for approval. The Primary Processor and Subcontractor must sign the subcontractor Agreement.

22. SOURCES OF DONATED FOOD FOR PROCESSING

The Processor may acquire DF for processing under this Agreement from one or more of the following sources:

- A. Direct shipment of DF to the Processor's plant as ordered by the DA. Such orders should be mutually agreed upon between the processor and the DA in consideration of inventory status and estimated deliveries of end product.
- B. Transfer from other States with which the Processor has an Agreement and as authorized by both states.
- C. Backhaul from the RA's and/or DA's inventory.

All quantities of DF and sources must be entered as DF received on the monthly performance report required in Article 15. of this Agreement. Approval of this Agreement by the DA shall not obligate the DA or USDA to deliver DF for processing.

23. **DEMURRAGE AND DETENTION**

The Processor shall be responsible for all demurrage and detention charges on shipments of DF placed for unloading at the Processor's plant that have been ordered for delivery as mutually agreed unless other payment arrangements have been mutually agreed upon between the Processor and the DA. The DA should make every effort to ensure that the Processor is notified of shipment of DF destined for the Processor's plant as soon as possible to assist the Processor in coordination of receiving, purchasing, production, and unloading.

24. **INDEMNITY/HOLD HARMLESS**

The Processor will indemnify and hold the DA and the RA free and harmless from any claims, damages, judgments, expenses, attorney's fees and compensations arising out of physical injury, death, and/or property damage sustained or alleged to have been sustained in whole or in part, by any and all persons whatsoever as a result of or arising out of any act or omission of the Processor, his/her agents or employees, or caused or resulting from any deleterious substance in any of the products produced from DF for which the Processor is responsible.

25. **INSURANCE**

The Processor must maintain adequate coverage for all insurable losses.

26. ASSURANCE OF CIVIL RIGHTS COMPLIANCE AND EMPLOYMENT

The Processor agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000 d et seq.) all provisions required by the implementing regulations of Department of Agriculture, Department of Justice Enforcement Guidelines, FNS directives and guidelines to the effect that no person on the grounds of race, color, national origin, sex, age or handicap shall be excluded from participation in be denied the benefits of or otherwise be subject to discrimination under any activity carried out under this Agreement. In addition, the Processor agrees not to discriminate on the basis of race, color, national origin, sex, age or handicap among eligible RAs in the merchandising and sale of end products containing DF. This assurance is given in consideration of and for the purposes of obtaining permission to use federal property or interest in such property without consideration or at a nominal consideration. This assurance is binding on the Processor its succors, transferees, and assignees as long as it receives assistance or retains possession of any assistance from FNS. The Processor shall comply with all applicable Federal, State and Local laws and regulations pertaining to wages hours and conditions of employment.

27. UNLAWFUL BENEFITS

No employees and/or agent(s) of any party to this Agreement, DA's office or any RA for which processing under this Agreement has been approved, shall be admitted to or may accept any share or part of this Agreement or to any benefit that may arise there from.

28. **AGREEMENT ENTIRETY**

This Agreement including the attachments contains the entire understanding between the parties hereto relating to the matters covered hereunder. All prior negotiations, representations, understandings and/or stipulations are conclusively superseded hereby and no other agreement or promise made by any party hereto, or by any of their agent(s), which is not contained in this Agreement, shall be binding or valid.

29. MODIFICATION/AMENDMENT OF AGREEMENT

This Agreement and Addendum A shall not be modified, amended, altered, or changed except by a written agreement signed by the parties hereto. If written agreement is obtained for changes in end product formulation, return of DF, or net case cost, the Processor shall not implement changes until written approval is received from the DA.

30. **SERVING OF NOTICES**

Any notice, demand or communication under or in connection with this Agreement may be served upon the other party by personal service, or by mailing the same by registered or certified mail, postage prepaid and addressed to the designated representative of such party at the address set out in this Agreement. Any such notice or demand shall be deemed served at the time of personal service or within 48 hours after the posting of the notice in the United States mail. Either party may change such designated representatives or mailing address by written notification to the other party.

31. **LEGAL RESOLUTION**

The Processor agrees that in performance of this Agreement to obey, abide, and comply with all applicable local state, and federal laws and regulations. This Agreement shall be governed and construed and the rights and obligations of parties hereto shall be determined in accordance with the laws of the State, which the DA represents. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

32. **DISTRIBUTION OF COPIES**

All parties to this Agreement shall retain a copy of the signed Agreement and Addendum for their records. Copies may be provided to any person upon request as public records under the applicable federal or state Freedom of Information laws.

33. **ELIGIBLE RECIPIENT AGENCIES**

Upon approval of this Agreement, the DA agrees to provide the Processor with a listing of all eligible RA's with appropriate identification numbers, if applicable, and addresses. The Processor can reduce inventory only upon delivery of approved end products to these eligible RA's.

34. **DEBARMENT**

Certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants Responsibilities. The regulations were published as Part IV of the January 30, 1989. Federal Register (pages 4722-4733).

By signing this agreement, the prospective lower tier participant (Processor) agrees it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

35. SPECIAL PROVISIONS

In addition to the forgoing provisions, the Processor agrees to the following terms and conditions required by the DA, local and State Laws:

The Processor must submit a current performance and surety bond, irrevocable letter of credit, or an escrow account from a company listed in Circular 570, Surety Companies Acceptance on Federal Bonds.

The bond shall be made payable to the DA and s	hall be countersigned by the local bo	nding agent. The amount of the bond
must be in an amount that is sufficient to protec	the contract value of donated foods	The DA shall determine the dollar
value of the bond which is \$		

36. **PERIOD OF AGREEMENT**

38.

This Agreement shall become effective on July 1, 2008 and will terminate on June 30, 2009. This Agreement may be extended for two-one year periods.

37. **DONATED FOOD VALUE PASS THROUGH SYSTEM**

The Processor shall designate arrangements to be used during the term of the Agreement (Refer to Article 3). Check the following selected system.

_____1. Direct Sale Discount
_____4. Indirect Sale Refund

_____3. Indirect Sale Discount AUTHORIZED PROCESSOR SIGNATURE

___2. Direct Sale Refund

The Agreement must be signed by the Owner, Partner, or Corporate Officer duly authorized to sign contractual agreements. Disclosure of ownership of the Processor shall be submitted if requested by the DA.

____5. Fee for Service

____6. Other (with prior approval)

Private Owned-The Owner must sign this Agreement.

Partnership-A Partner must sign this Agreement.

Corporation-A Corporate Officer must sign this Agreement.

If an employee other than these specified individuals' signs this Agreement, a Power of Attorney indicating employee's authority must accompany this Agreement. All addenda to this Agreement shall be signed by the authorized individual who signed this Agreement except that the EPDS could be signed by his/her authorized designee.

In witness whereof, the Parties hereto have caused this Agreement to be signed by their respective agent.

APPROVED

Processor	Distributing Agency
Print or type Name	Print or Type Name
Title	Title
Signature	Signature
Address	Address
City, State, Zip	City, State, Zip
Telephone Number	Telephone Number
Fax Number	Fax Number
Date Signed	Date Approved
Federal ID Number	

SUGGESTED FORMAT FOR SURETY BONDS

				BON	ND NO	
KNOW (Processor/c	company) a	PERSONS and			,	(hereinafter called
corporation (name of Dollars (and truly to	(hereinal distribution (\$) be made,	fter called the great gr	Surety) ereinafter al money ourselves	called the of the United s and our heir	and firmly Obligee), in States, for payr	bound unto the the amount of which well rs, successors, and
Processor Processing s State Proces	Principal H said foods essing Ag	lereunder, certain in accordance wi greement in wa	n unfinis ith the riting m	hed USDA d	id food proce	rning over to for the purpose of(contract year) essor, which the s fully as if recited
handle said foods accord said finished and truly pe	materials ding to the d product erforming	and account for e specification in (s) to the Eligible	same, an n said Do le Recipi able cove	d process, madenated food Process enants or cond	nufacture, pack rocessing Agree in satisfactory ditions in said A	estly and faithfully tage or finish such ement, and returns condition, keeping Agreement recited,
hindered or Order of Go the Surety, t	delayed by the delaye	y <u>Force Majeur</u> war, civil comr	e, such a notion, st is bond sl	s fire, flood, rike or the si	hurricane, eart milar cause bey	nent is prevented, hquake, Executive ond the control of at that performance
<u>30, 2009</u> .	SS WHER		pal and S			r hands and seals,

SUBCONTRACTOR AGREEMENT

Subcontractor Agreement: Au	thority USDA FNS title 7 CFF	R Part 250
Whereas	(primary processo	or) holds a Master Donated Food Processing
Agreement with the	coveri	ing the period from July 1, 2008 to June 30,
2009 (hereinafter "Agreemen	t") and whereas	part of the Agreement,
and is capable	of performing	part of the Agreement,
namely	(Specify fur	nction and USDA donated foods used). It is
further agreed that the Subco	ontractor mentioned above wi	ill conform to all terms and conditions of the
above named Agreement, mak	ing this addendum part of tha	at Agreement.
they pertain and shall make that any time without prior nefollowing:	nem available for inspection b	om the close of the federal fiscal year to which by either state, federal or local representatives hours. Processor records shall include the reach month.
•	end products remaining on har delivered to RA or back to the	
	5	cessor and the Subcontractor and attached to cessed, or any other function for which the
ALL PARTIES APPROVED		
PRIMARY PROCESSOR		
Primary Processor	Title	Telephone No
Name	Address	
Signature		Date
======================================	-===========	
Subcontractor	Title	Telephone No
Name	Address	_
Signature		Date

FOOD DISTRIBUTION APPROVAL

State Distributing Agency	
Name	
SignatureDate	